

Title 43

STATE GOVERNMENT—EXECUTIVE

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Chapter 43.01 RCW

STATE OFFICERS—GENERAL PROVISIONS

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- 43.01.040 Vacations—Computation and accrual—Transfer—Statement
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43.01.040 Vacations—Computation and accrual—Transfer—Statement of necessity required for extension of unused leave. Each subordinate officer and employee of the several offices, departments, and institutions of the state government shall be entitled under their contract of employment with the state government to not less than one working day of vacation leave with full pay for each month of employment if said employment is continuous for six months.

Each such subordinate officer and employee shall be entitled under such contract of employment to not less than one additional working day of vacation with full pay each year for satisfactorily completing the first two, three and five continuous years of employment respectively.

Such part time officers or employees of the state government who are employed on a regular schedule of duration of not less than one year shall be entitled under their contract of employment to that fractional part of the vacation leave that the total number of hours of such employment bears to the total number of hours of full time employment.

Each subordinate officer and employee of the several offices, departments and institutions of the state government shall be entitled under his or her contract of employment with the state government to accrue unused vacation leave not to exceed thirty working days. Officers and employees transfer-

ring within the several offices, departments and institutions of the state government shall be entitled to transfer such accrued vacation leave to each succeeding state office, department or institution. All vacation leave shall be taken at the time convenient to the employing office, department or institution: PROVIDED, That if a subordinate officer's or employee's request for vacation leave is deferred by reason of the convenience of the employing office, department or institution, and a statement of the necessity therefor is retained by the agency, then the aforesaid maximum thirty working days of accrued unused vacation leave shall be extended for each month said leave is so deferred. [2011 1st sp.s. c 43 § 449; 2009 c 549 § 5001; 1984 c 184 § 19; 1982 1st ex.s. c 51 § 2; 1965 ex.s. c 13 § 1; 1965 c 8 § 43.01.040. Prior: 1955 c 140 § 1; 1921 c 7 § 133; RRS § 10891.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Military leave of absence: RCW 38.40.060.

Additional notes found at www.leg.wa.gov

43.01.041 Accrued vacation leave—Payment upon termination of employment. Officers and employees referred to in RCW 43.01.040 whose employment is terminated by their death, reduction in force, resignation, dismissal, or retirement, and who have accrued vacation leave as specified in RCW 43.01.040 or 43.01.044, shall be paid therefor under their contract of employment, or their estate if they are deceased, or if the employee in case of voluntary resignation has provided adequate notice of termination. Annual leave accumulated under RCW 43.01.044 is not to be included in the computation of retirement benefits. From July 1, 2011, through June 29, 2013, the amount of pay received by an employee under the provisions of this section shall not be reduced by any temporary salary reduction.

Should the legislature revoke any benefits or rights provided under chapter 292, Laws of 1985, no affected officer or employee shall be entitled thereafter to receive such benefits or exercise such rights as a matter of contractual right. [2011 1st sp.s. c 39 § 13; 1985 c 292 § 1; 1984 c 184 § 20; 1982 1st ex.s. c 51 § 3; 1965 c 8 § 43.01.041. Prior: 1955 c 140 § 2.]

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Additional notes found at www.leg.wa.gov

43.01.135 Sexual harassment in the workplace. Agencies as defined in RCW 41.06.020, except for institutions of higher education, shall:

(1) Update or develop and disseminate among all agency employees and contractors a policy that:

(a) Defines and prohibits sexual harassment in the workplace;

(b) Includes procedures that describe how the agency will address concerns of employees who are affected by sexual harassment in the workplace;

(c) Identifies appropriate sanctions and disciplinary actions; and

(d) Complies with guidelines adopted by the director of personnel under RCW 41.06.395;

(2) Respond promptly and effectively to sexual harassment concerns;

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(3) Conduct training and education for all employees in order to prevent and eliminate sexual harassment in the organization;

(4) Inform employees of their right to file a complaint with the Washington state human rights commission under chapter 49.60 RCW, or with the federal equal employment opportunity commission under Title VII of the civil rights act of 1964; and

(5) Report to the department of enterprise services on compliance with this section.

The cost of the training programs shall be borne by state agencies within existing resources. [2011 1st sp.s. c 43 § 450; 2007 c 76 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.01.225 Commute trip reduction—Parking revenue—State vehicle parking account. There is hereby established an account in the state treasury to be known as the "state vehicle parking account." All parking rental income resulting from parking fees established by the department of enterprise services under RCW 46.08.172 at state-owned or leased property shall be deposited in the "state vehicle parking account." Revenue deposited in the "state vehicle parking account" shall be first applied to pledged purposes. Unpledged parking revenues deposited in the "state vehicle parking account" may be used to:

(1) Pay costs incurred in the operation, maintenance, regulation, and enforcement of vehicle parking and parking facilities;

(2) Support the lease costs and/or capital investment costs of vehicle parking and parking facilities; and

(3) Support agency commute trip reduction programs under RCW 70.94.521 through 70.94.551. [2011 1st sp.s. c 43 § 253; 1995 c 215 § 2; 1993 c 394 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Finding—Purpose—1993 c 394: See note following RCW 43.01.220.

Chapter 43.03 RCW

SALARIES AND EXPENSES

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43.03.028	Salaries of agency officials—Reports.
43.03.030	Increase or reduction of appointees' compensation.
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43.03.220	Compensation of members of part-time boards and commissions—Class one groups (<i>as amended by 2011 1st sp.s. c 21</i>).
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43.03.230	Compensation of members of part-time boards and commissions—Class two groups (<i>as amended by 2011 1st sp.s. c 21</i>).

- 43.03.240 Compensation of members of part-time boards and commissions—Class three groups *(as amended by 2011 c 5)*.
- 43.03.240 Compensation of members of part-time boards and commissions—Class three groups *(as amended by 2011 1st sp.s. c 2)*.
- 43.03.250 Compensation of members of part-time boards and commissions—Class four groups *(as amended by 2011 c 5)*.
- 43.03.250 Compensation of members of part-time boards and commissions—Class four groups *(as amended by 2011 1st sp.s. c 2)*.
- 43.03.265 Compensation of members of part-time boards and commissions—Class five groups *(as amended by 2011 c 5)*.
- 43.03.265 Compensation of members of part-time boards and commissions—Class five groups *(as amended by 2011 1st sp.s. c 2)*.
- 43.03.305 Washington citizens' commission on salaries for elected officials—Generally *(as amended by 2011 c 60)*. *(Effective January 1, 2012.)*
- 43.03.305 Washington citizens' commission on salaries for elected officials—Generally *(as amended by 2011 c 254)*.
- 43.03.3051 Elected officials—Voluntary salary reduction.

43.03.011 Salaries of state elected officials of the executive branch. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 43.03.010 and 43.03.310, the annual salaries of the state elected officials of the executive branch shall be as follows:

- (1) Effective September 1, 2010:
 - (a) Governor \$ 166,891
 - (b) Lieutenant governor \$ 93,948
 - (c) Secretary of state \$ 116,950
 - (d) Treasurer \$ 116,950
 - (e) Auditor \$ 116,950
 - (f) Attorney general \$ 151,718
 - (g) Superintendent of public instruction \$ 121,618
 - (h) Commissioner of public lands \$ 121,618
 - (i) Insurance commissioner \$ 116,950
- (2) Effective September 1, 2011:
 - (a) Governor \$ 166,891
 - (b) Lieutenant governor \$ 93,948
 - (c) Secretary of state \$ 116,950
 - (d) Treasurer \$ 116,950
 - (e) Auditor \$ 116,950
 - (f) Attorney general \$ 151,718
 - (g) Superintendent of public instruction \$ 121,618
 - (h) Commissioner of public lands \$ 121,618
 - (i) Insurance commissioner \$ 116,950
- (3) Effective September 1, 2012:
 - (a) Governor \$ 166,891
 - (b) Lieutenant governor \$ 93,948
 - (c) Secretary of state \$ 116,950
 - (d) Treasurer \$ 116,950
 - (e) Auditor \$ 116,950
 - (f) Attorney general \$ 151,718
 - (g) Superintendent of public instruction \$ 121,618
 - (h) Commissioner of public lands \$ 121,618
 - (i) Insurance commissioner \$ 116,950

(4) The lieutenant governor shall receive the fixed amount of his or her salary plus 1/260th of the difference between his or her salary and that of the governor for each day that the lieutenant governor is called upon to perform the duties of the governor by reason of the absence from the state, removal, resignation, death, or disability of the governor. [2011 c 380 § 1; 2009 c 581 § 1; 2009 c 549 § 5004; 2007 c 524 § 1; 2005 c 519 § 1; 2003 1st sp.s. c 1 § 1; 2001 1st sp.s. c 3 § 1; 1999 sp.s. c 3 § 1; 1997 c 458 § 1; 1995 2nd sp.s. c 1

§ 1; 1993 sp.s. c 26 § 1; 1991 sp.s. c 1 § 1; 1989 2nd ex.s. c 4 § 1; 1987 1st ex.s. c 1 § 1, part.]

43.03.012 Salaries of judges. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 2.04.092, 2.06.062, 2.08.092, 3.58.010, and 43.03.310, the annual salaries of the judges of the state shall be as follows:

- (1) Effective September 1, 2010:
 - (a) Justices of the supreme court \$ 164,221
 - (b) Judges of the court of appeals \$ 156,328
 - (c) Judges of the superior court \$ 148,832
 - (d) Full-time judges of the district court \$ 141,710
- (2) Effective September 1, 2011:
 - (a) Justices of the supreme court \$ 164,221
 - (b) Judges of the court of appeals \$ 156,328
 - (c) Judges of the superior court \$ 148,832
 - (d) Full-time judges of the district court \$ 141,710
- (3) Effective September 1, 2012:
 - (a) Justices of the supreme court \$ 164,221
 - (b) Judges of the court of appeals \$ 156,328
 - (c) Judges of the superior court \$ 148,832
 - (d) Full-time judges of the district court \$ 141,710
- (4) The salary for a part-time district court judge shall be

the proportion of full-time work for which the position is authorized, multiplied by the salary for a full-time district court judge. [2011 c 380 § 2; 2009 c 581 § 2; 2007 c 524 § 2; 2005 c 519 § 2; 2003 1st sp.s. c 1 § 2; 2001 1st sp.s. c 3 § 2; 1999 sp.s. c 3 § 2; 1997 c 458 § 2; 1995 2nd sp.s. c 1 § 2; 1993 sp.s. c 26 § 2; 1991 sp.s. c 1 § 2; 1989 2nd ex.s. c 4 § 2; 1987 1st ex.s. c 1 § 1, part.]

43.03.013 Salaries of members of the legislature. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 43.03.010 and 43.03.310, the annual salary of members of the legislature shall be:

- (1) Effective September 1, 2010:
 - (a) Legislators \$ 42,106
 - (b) Speaker of the house \$ 50,106
 - (c) Senate majority leader \$ 50,106
 - (d) House minority leader \$ 46,106
 - (e) Senate minority leader \$ 46,106
- (2) Effective September 1, 2011:
 - (a) Legislators \$ 42,106
 - (b) Speaker of the house \$ 50,106
 - (c) Senate majority leader \$ 50,106
 - (d) House minority leader \$ 46,106
 - (e) Senate minority leader \$ 46,106
- (3) Effective September 1, 2012:
 - (a) Legislators \$ 42,106
 - (b) Speaker of the house \$ 50,106
 - (c) Senate majority leader \$ 50,106
 - (d) House minority leader \$ 46,106
 - (e) Senate minority leader \$ 46,106

[2011 c 380 § 3; 2009 c 581 § 3; 2007 c 524 § 3; 2005 c 519 § 3; 2003 1st sp.s. c 1 § 3; 2001 1st sp.s. c 3 § 3; 1999 sp.s. c 3 § 3; 1997 c 458 § 3; 1995 2nd sp.s. c 1 § 3; 1993 sp.s. c 26 § 3; 1991 sp.s. c 1 § 3; 1989 2nd ex.s. c 4 § 3; 1987 1st ex.s. c 1 § 1, part.]

43.03.028 Salaries of agency officials—Reports. (1)

The office of financial management shall study the duties and salaries of the directors of the several departments and the members of the several boards and commissions of state government, who are subject to appointment by the governor or whose salaries are fixed by the governor, and of the chief executive officers of the following agencies of state government:

The arts commission; the human rights commission; the board of accountancy; the eastern Washington historical society; the Washington state historical society; the recreation and conservation office; the criminal justice training commission; the traffic safety commission; the horse racing commission; the public disclosure commission; the state conservation commission; the commission on Hispanic affairs; the commission on Asian Pacific American affairs; the state board for volunteer firefighters and reserve officers; the transportation improvement board; the public employment relations commission; and the energy facilities site evaluation council.

(2) The office of financial management shall report to the governor or the chairperson of the appropriate salary fixing authority at least once in each fiscal biennium on such date as the governor may designate, but not later than seventy-five days prior to the convening of each regular session of the legislature during an odd-numbered year, its recommendations for the salaries to be fixed for each position. [2011 1st sp.s. c 43 § 451; 2010 1st sp.s. c 7 § 2; 2007 c 241 § 3; 2001 c 302 § 2; 1995 c 67 § 1. Prior: 1993 c 281 § 45; 1993 c 101 § 14; 1991 c 3 § 294; 1988 c 167 § 9; prior: 1987 c 504 § 15; 1987 c 249 § 7; 1986 c 155 § 9; 1982 c 163 § 21; 1980 c 87 § 20; prior: 1977 ex.s. c 127 § 1; 1977 c 75 § 36; 1970 ex.s. c 43 § 2; 1967 c 19 § 1; 1965 c 8 § 43.03.028; prior: 1961 c 307 § 1; 1955 c 340 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Findings—1993 c 101: See note following RCW 27.34.010.

Additional notes found at www.leg.wa.gov

43.03.030 Increase or reduction of appointees' compensation. (1) Wherever the compensation of any appointive state officer or employee is fixed by statute, it may be hereafter increased or decreased in the manner provided by law for the fixing of compensation of other appointive state officers or employees; but this subsection shall not apply to the heads of state departments.

(2) Wherever the compensation of any state officer appointed by the governor, or of any employee in any office or department under the control of any such officer, is fixed by statute, such compensation may hereafter, from time to time, be changed by the governor, and he or she shall have power to fix such compensation at any amount not to exceed the amount fixed by statute.

(3) From February 18, 2009, through June 30, 2013, a salary or wage increase shall not be granted to any position under this section, except that increases may be granted for positions for which the employer has demonstrated difficulty

retaining qualified employees if the following conditions are met:

(a) The salary increase can be paid within existing resources;

(b) The salary increase will not adversely impact the provision of client services; and

(c) For any state agency of the executive branch, not including institutions of higher education, the salary increase is approved by the director of the office of financial management.

Any agency granting a salary increase from February 15, 2010, through June 30, 2011, to a position exempt under this section shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases.

Any agency granting a salary increase from July 1, 2011, through June 30, 2013, to a position exempt under this section shall submit a report to the fiscal committees of the legislature by July 31, 2012, and July 31, 2013, detailing the positions for which salary increases were granted during the preceding fiscal year, the size of the increases, and the reasons for giving the increases.

From July 1, 2011, through June 29, 2013, salaries for all positions under this section are subject to RCW 41.04.820. [2011 1st sp.s. c 39 § 7; 2010 c 1 § 4; 2009 c 549 § 5007; 2009 c 5 § 4; 1965 c 8 § 43.03.030. Prior: (i) 1921 c 49 § 1; RRS § 10896. (ii) 1933 c 47 § 1; RRS § 10976-1.]

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Effective date—2010 c 1: See note following RCW 41.06.070.

Effective date—2009 c 5: See note following RCW 41.06.070.

43.03.040 Salaries of certain directors and chief executive officers. Subject to RCW 41.04.820, the directors of the several departments and members of the several boards and commissions, whose salaries are fixed by the governor and the chief executive officers of the agencies named in RCW 43.03.028(1) as now or hereafter amended shall each severally receive such salaries, payable in monthly installments, as shall be fixed by the governor or the appropriate salary fixing authority, in an amount not to exceed the recommendations of the department of personnel. From February 18, 2009, through June 30, 2013, a salary or wage increase shall not be granted to any position under this section, except that increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(1) The salary increase can be paid within existing resources;

(2) The salary increase will not adversely impact the provision of client services; and

(3) For any state agency of the executive branch, not including institutions of higher education, the salary increase is approved by the director of the office of financial management.

Any agency granting a salary increase from February 15, 2010, through June 30, 2011, to a position under this section shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for

which salary increases were granted, the size of the increases, and the reasons for giving the increases.

Any agency granting a salary increase from July 1, 2011, through June 30, 2013, to a position under this section shall submit a report to the fiscal committees of the legislature by July 31, 2012, and July 31, 2013, detailing the positions for which salary increases were granted during the preceding fiscal year, the size of the increases, and the reasons for giving the increases. [2011 1st sp.s. c 39 § 8. Prior: 2010 1st sp.s. c 7 § 5; 2010 c 1 § 5; 2009 c 5 § 5; 1993 sp.s. c 24 § 914; 1986 c 155 § 12; 1977 ex.s. c 127 § 2; 1970 ex.s. c 43 § 3; 1965 c 8 § 43.03.040; prior: 1961 c 307 § 2; 1955 c 340 § 2; 1949 c 111 § 1; 1937 c 224 § 1; Rem. Supp. 1949 § 10776-1.]

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Effective date—2010 c 1: See note following RCW 41.06.070.

Effective date—2009 c 5: See note following RCW 41.06.070.

Additional notes found at www.leg.wa.gov

43.03.049 Restrictions on subsistence, lodging, or travel—Exceptions. Exceptions to restrictions on subsistence, lodging, or travel expenses under this chapter may be granted for the critically necessary work of an agency. For agencies of the executive branch, the exceptions shall be subject to approval by the director of financial management or the director's designee. For agencies of the judicial branch, the exceptions shall be subject to approval of the chief justice of the supreme court. For the house of representatives and the senate, the exceptions shall be subject to the approval of the chief clerk of the house of representatives and the secretary of the senate, respectively, under the direction of the senate committee on facilities and operations and the executive rules committee of the house of representatives. For other legislative agencies, the exceptions shall be subject to approval of both the chief clerk of the house of representatives and the secretary of the senate under the direction of the senate committee on facilities and operations and the executive rules committee of the house of representatives. [2011 1st sp.s. c 21 § 63.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

43.03.050 Subsistence, lodging and refreshment, and per diem allowance for officials, employees, and members of boards, commissions, or committees. (1) The director of financial management shall prescribe reasonable allowances to cover reasonable and necessary subsistence and lodging expenses for elective and appointive officials and state employees while engaged on official business away from their designated posts of duty. The director of financial management may prescribe and regulate the allowances provided in lieu of subsistence and lodging expenses and may prescribe the conditions under which reimbursement for subsistence and lodging may be allowed. The schedule of allowances adopted by the office of financial management may include special allowances for foreign travel and other travel involving higher than usual costs for subsistence and lodging. The allowances established by the director shall not exceed the rates set by the federal government for federal employees.

However, during the 2003-05 fiscal biennium, the allowances for any county that is part of a metropolitan statistical area, the largest city of which is in another state, shall equal the allowances prescribed for that larger city.

(2) Those persons appointed to serve without compensation on any state board, commission, or committee, if entitled to payment of travel expenses, shall be paid pursuant to special per diem rates prescribed in accordance with subsection (1) of this section by the office of financial management.

(3) The director of financial management may prescribe reasonable allowances to cover reasonable expenses for meals, coffee, and light refreshment served to elective and appointive officials and state employees regardless of travel status at a meeting where: (a) The purpose of the meeting is to conduct official state business or to provide formal training to state employees or state officials; (b) the meals, coffee, or light refreshment are an integral part of the meeting or training session; (c) the meeting or training session takes place away from the employee's or official's regular workplace; and (d) the agency head or authorized designee approves payments in advance for the meals, coffee, or light refreshment. In order to prevent abuse, the director may regulate such allowances and prescribe additional conditions for claiming the allowances.

(4) Upon approval of the agency head or authorized designee, an agency may serve coffee or light refreshments at a meeting where: (a) The purpose of the meeting is to conduct state business or to provide formal training that benefits the state; and (b) the coffee or light refreshment is an integral part of the meeting or training session. The director of financial management shall adopt requirements necessary to prohibit abuse of the authority authorized in this subsection.

(5) The schedule of allowances prescribed by the director under the terms of this section and any subsequent increases in any maximum allowance or special allowances for areas of higher than usual costs shall be reported to the ways and means committees of the house of representatives and the senate at each regular session of the legislature.

(6) No person designated as a member of a class one through class three or class five board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund. Exceptions may be granted under RCW 43.03.049. [2011 1st sp.s. c 21 § 61; 2010 1st sp.s. c 7 § 141; 2003 1st sp.s. c 25 § 915; 1990 c 30 § 1; 1983 1st ex.s. c 29 § 1; 1979 c 151 § 83; 1977 ex.s. c 312 § 1; 1975-'76 2nd ex.s. c 34 § 94; 1970 ex.s. c 34 § 1; 1965 ex.s. c 77 § 1; 1965 c 8 § 43.03.050. Prior: 1961 c 220 § 1; 1959 c 194 § 1; 1953 c 259 § 1; 1949 c 17 § 1; 1943 c 86 § 1; Rem. Supp. 1949 § 10981-1.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Additional notes found at www.leg.wa.gov

43.03.060 Mileage allowance. (1) Whenever it becomes necessary for elective or appointive officials or employees of the state to travel away from their designated

posts of duty while engaged on official business, and it is found to be more advantageous or economical to the state that travel be by a privately-owned vehicle rather than a common carrier or a state-owned or operated vehicle, a mileage rate established by the director of financial management shall be allowed. The mileage rate established by the director shall not exceed any rate set by the United States treasury department above which the substantiation requirements specified in Treasury Department Regulations section 1.274-5T(a)(1), as now law or hereafter amended, will apply.

(2) The director of financial management may prescribe and regulate the specific mileage rate or other allowance for the use of privately-owned vehicles or common carriers on official business and the conditions under which reimbursement of transportation costs may be allowed. The reimbursement or other payment for transportation expenses of any employee or appointive official of the state shall be based on the method deemed most advantageous or economical to the state.

(3) The mileage rate established by the director of financial management pursuant to this section and any subsequent changes thereto shall be reported to the ways and means committees of the house of representatives and the senate at each regular session of the legislature.

(4) No person designated as a member of a class one through class three or class five board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund. Exceptions may be granted under RCW 43.03.049. [2011 1st sp.s. c 21 § 62; 1990 c 30 § 2; 1983 1st ex.s. c 29 § 2; 1979 c 151 § 84; 1977 ex.s. c 312 § 2; 1975-'76 2nd ex.s. c 34 § 95; 1974 ex.s. c 157 § 1; 1967 ex.s. c 16 § 4; 1965 c 8 § 43.03.060. Prior: 1949 c 17 § 2; 1943 c 86 § 2; Rem. Supp. 1949 § 10981-2.]

Effective date—Purpose—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Additional notes found at www.leg.wa.gov

43.03.120 Moving expenses of new employees. Any state office, commission, department or institution may also pay the moving expenses of a new employee, necessitated by his or her acceptance of state employment, pursuant to mutual agreement with such employee in advance of his or her employment. Payment for all expenses authorized by RCW 43.03.060, 43.03.110 through 43.03.210 including moving expenses of new employees, exempt or classified, and others, shall be subject to reasonable rules adopted by the director of financial management, including regulations defining allowable moving costs: PROVIDED, That, if the new employee terminates or causes termination of his or her employment with the state within one year of the date of employment, the state shall be entitled to reimbursement for the moving costs which have been paid and may withhold such sum as necessary therefor from any amounts due the employee. [2011 1st sp.s. c 43 § 452; 2009 c 549 § 5009; 1979 c 151 § 86; 1967 ex.s. c 16 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.03.130 Travel expenses of prospective employees. Any state office, commission, department or institution may

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agree to pay the travel expenses of a prospective employee as an inducement for such applicant to travel to a designated place to be interviewed by and for the convenience of such agency. Travel expenses authorized for prospective employees called for interviews shall be payable at rates in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. When an applicant is called to be interviewed by or on behalf of more than one agency, the authorized travel expenses may be paid directly by the authorizing personnel department or agency, subject to reimbursement from the interviewing agencies on a pro rata basis.

In the case of both classified and exempt positions, such travel expenses will be paid only for applicants being considered for the positions of director, deputy director, assistant director, or supervisor of state departments, boards or commissions; or equivalent or higher positions; or engineers, or other personnel having both executive and professional status. In the case of the state investment board, such travel expenses may also be paid for applicants being considered for investment officer positions. In the case of four-year institutions of higher education, such travel expenses will be paid only for applicants being considered for academic positions above the rank of instructor or professional or administrative employees in supervisory positions. In the case of community and technical colleges, such travel expenses may be paid for applicants being considered for full-time faculty positions or administrative employees in supervisory positions. [2011 1st sp.s. c 43 § 453; 2000 c 153 § 1; 1993 c 93 § 1; 1975-'76 2nd ex.s. c 34 § 96; 1967 ex.s. c 16 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.03.220 Compensation of members of part-time boards and commissions—Class one groups (as amended by 2011 c 5). (1) Any part-time board, commission, council, committee, or other similar group which is established by the executive, legislative, or judicial branch to participate in state government and which functions primarily in an advisory, coordinating, or planning capacity shall be identified as a class one group.

(2) Absent any other provision of law to the contrary, no money beyond the customary reimbursement or allowance for expenses may be paid by or through the state to members of class one groups for attendance at meetings of such groups.

(3) Beginning July 1, 2010, through June 30, 2011, no person designated as a member of a class one board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund. Exceptions may be granted under section 605, chapter 3, Laws of 2010. Class one groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law. Meetings that require a member's physical presence at one location must be held in state facilities whenever possible (~~and~~). Meetings conducted using private facilities must be approved by the director of the office of financial management, except for facilities provided free of charge.

(4) Beginning July 1, 2010, through June 30, 2011, class one groups that are funded by sources other than the state general fund are encouraged to reduce travel, lodging, and other costs associated with conducting the business of the group including use of other meeting formats that do not require travel. [2011 c 5 § 902; 2010 1st sp.s. c 7 § 142; 1984 c 287 § 2.]

Effective date—2011 c 5: See note following RCW 43.79.487.

43.03.220 Compensation of members of part-time boards and commissions—Class one groups (as amended by 2011 1st sp.s. c 21). (1) Any part-time board, commission, council, committee, or other similar

group which is established by the executive, legislative, or judicial branch to participate in state government and which functions primarily in an advisory, coordinating, or planning capacity shall be identified as a class one group.

(2) Absent any other provision of law to the contrary, no money beyond the customary reimbursement or allowance for expenses may be paid by or through the state to members of class one groups for attendance at meetings of such groups.

(3) ~~((Beginning July 1, 2010, through June 30, 2011,))~~(a) No person designated as a member of a class one board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund. Exceptions may be granted under RCW 43.03.049 ~~((605, chapter 3, Laws of 2010))~~. Class one groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law. ~~((Meetings that require a member's physical presence at one location must be held in state facilities whenever possible, and meetings conducted using private facilities must be approved by the director of the office of financial management.))~~

(4) ~~Beginning July 1, 2010, through June 30, 2011,))~~ (b) Class one groups that are funded by sources other than the state general fund are encouraged to reduce travel, lodging, and other costs associated with conducting the business of the group including use of other meeting formats that do not require travel. [2011 1st sp.s. c 21 § 55; 2010 1st sp.s. c 7 § 142; 1984 c 287 § 2.]

Reviser's note: RCW 43.03.220 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Legislative findings—1984 c 287: "The legislature finds that members of part-time boards, commissions, councils, committees, and other similar groups established by the executive, legislative, or judicial branches of state government make a valuable contribution to the public welfare. This time and talent so generously donated to the state is gratefully acknowledged.

The legislature further finds that membership on certain part-time groups involves responsibility for major policy decisions and represents a significant demand on the time and resources of members. The demands and responsibilities are well beyond reasonable expectations of an individual's gratuitous contribution to the public welfare. It is therefore appropriate to provide compensation to members of specific qualifying groups and further to provide three levels of compensation based on the responsibilities of the group and the time required to perform the group's statutory duties." [1984 c 287 § 1.]

Additional notes found at www.leg.wa.gov

43.03.230 Compensation of members of part-time boards and commissions—Class two groups (as amended by 2011 c 5). (1) Any agricultural commodity board or commission established pursuant to Title 15 or 16 RCW shall be identified as a class two group for purposes of compensation.

(2) Except as otherwise provided in this section, each member of a class two group is eligible to receive compensation in an amount not to exceed one hundred dollars for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group. A person shall not receive compensation for a day of service under this section if the person (a) occupies a position, normally regarded as full-time in nature, in any agency of the federal government, Washington state government, or Washington state local government; and (b) receives any compensation from such government for working that day.

(3) Compensation may be paid a member under this section only if it is authorized under the law dealing in particular with the specific group to which the member belongs or dealing in particular with the members of that specific group.

(4) Beginning July 1, 2010, through June 30, 2011, no person designated as a member of a class two board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund. Exceptions may be granted under section 605, chapter 3, Laws of 2010. Class two

groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law. Meetings that require a member's physical presence at one location must be held in state facilities whenever possible ~~((and))~~. Meetings conducted using private facilities must be approved by the director of the office of financial management, except for facilities provided free of charge.

(5) Beginning July 1, 2010, through June 30, 2011, class two groups that are funded by sources other than the state general fund are encouraged to reduce travel, lodging, and other costs associated with conducting the business of the group including use of other meeting formats that do not require travel. [2011 c 5 § 903; 2010 1st sp.s. c 7 § 143; 2001 c 315 § 11; 1984 c 287 § 3.]

Effective date—2011 c 5: See note following RCW 43.79.487.

43.03.230 Compensation of members of part-time boards and commissions—Class two groups (as amended by 2011 1st sp.s. c 21). (1) Any agricultural commodity board or commission established pursuant to Title 15 or 16 RCW shall be identified as a class two group for purposes of compensation.

(2) Except as otherwise provided in this section, each member of a class two group is eligible to receive compensation in an amount not to exceed one hundred dollars for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group. A person shall not receive compensation for a day of service under this section if the person (a) occupies a position, normally regarded as full-time in nature, in any agency of the federal government, Washington state government, or Washington state local government; and (b) receives any compensation from such government for working that day.

(3) Compensation may be paid a member under this section only if it is authorized under the law dealing in particular with the specific group to which the member belongs or dealing in particular with the members of that specific group.

(4) ~~((Beginning July 1, 2010, through June 30, 2011,))~~ No person designated as a member of a class two board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund. Exceptions may be granted under RCW 43.03.049 ~~((605, chapter 3, Laws of 2010))~~. Class two groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law. ~~((Meetings that require a member's physical presence at one location must be held in state facilities whenever possible, and meetings conducted using private facilities must be approved by the director of the office of financial management.))~~

(5) ~~Beginning July 1, 2010, through June 30, 2011,))~~ Class two groups that are funded by sources other than the state general fund are encouraged to reduce travel, lodging, and other costs associated with conducting the business of the group including use of other meeting formats that do not require travel. [2011 1st sp.s. c 21 § 56; 2010 1st sp.s. c 7 § 143; 2001 c 315 § 11; 1984 c 287 § 3.]

Reviser's note: RCW 43.03.230 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Legislative findings—Section headings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

43.03.240 Compensation of members of part-time boards and commissions—Class three groups (as amended by 2011 c 5). (1) Any part-time, statutory board, commission, council, committee, or other similar group which has rule-making authority, performs quasi-judicial functions, has responsibility for the administration or policy direction of a state agency or program, or performs regulatory or licensing functions with respect to a specific profession, occupation, business, or industry shall be identified as a class three group for purposes of compensation.

(2) Except as otherwise provided in this section, each member of a class three group is eligible to receive compensation in an amount not to exceed fifty dollars for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group. A person shall not receive compensation for a day of service under this section if the person (a) occupies a position, normally regarded as full-time in nature, in any agency of the federal government, Washington state government, or Washington state local government; and (b) receives any compensation from such government for working that day.

(3) Compensation may be paid a member under this section only if it is authorized under the law dealing in particular with the specific group to which the member belongs or dealing in particular with the members of that specific group.

(4) Beginning July 1, 2010, through June 30, 2011, no person designated as a member of a class three board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund. Exceptions may be granted under section 605, chapter 3, Laws of 2010. Class three groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law. Meetings that require a member's physical presence at one location must be held in state facilities whenever possible(~~(-and)~~). Meetings conducted using private facilities must be approved by the director of the office of financial management, except for facilities provided free of charge.

(5) Beginning July 1, 2010, through June 30, 2011, class three groups that are funded by sources other than the state general fund are encouraged to reduce travel, lodging, and other costs associated with conducting the business of the group including use of other meeting formats that do not require travel. [2011 c 5 § 904; 2010 1st sp.s. c 7 § 144; 1984 c 287 § 4.]

Effective date—2011 c 5: See note following RCW 43.79.487.

43.03.240 Compensation of members of part-time boards and commissions—Class three groups (as amended by 2011 1st sp.s. c 21). (1) Any part-time, statutory board, commission, council, committee, or other similar group which has rule-making authority, performs quasi-judicial functions, has responsibility for the administration or policy direction of a state agency or program, or performs regulatory or licensing functions with respect to a specific profession, occupation, business, or industry shall be identified as a class three group for purposes of compensation.

(2) Except as otherwise provided in this section, each member of a class three group is eligible to receive compensation in an amount not to exceed fifty dollars for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group. A person shall not receive compensation for a day of service under this section if the person (a) occupies a position, normally regarded as full-time in nature, in any agency of the federal government, Washington state government, or Washington state local government; and (b) receives any compensation from such government for working that day.

(3) Compensation may be paid a member under this section only if it is authorized under the law dealing in particular with the specific group to which the member belongs or dealing in particular with the members of that specific group.

(4) (~~Beginning July 1, 2010, through June 30, 2011,~~) No person designated as a member of a class three board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund. Exceptions may be granted under RCW 43.03.049 (~~(605, chapter 3, Laws of 2010)~~). Class three groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law. (~~Meetings that require a member's physical presence at one location must be held in state facilities whenever possible, and meetings conducted using private facilities must be approved by the director of the office of financial management.~~)

(5) (~~Beginning July 1, 2010, through June 30, 2011,~~) Class three groups that are funded by sources other than the state general fund are encouraged to reduce travel, lodging, and other costs associated with conducting the business of the group including use of other meeting formats that do not require travel. [2011 1st sp.s. c 21 § 57; 2010 1st sp.s. c 7 § 144; 1984 c 287 § 4.]

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Reviser's note: RCW 43.03.240 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Legislative findings—Section headings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

43.03.250 Compensation of members of part-time boards and commissions—Class four groups (as amended by 2011 c 5). (1) A part-time, statutory board, commission, council, committee, or other similar group shall be identified as a class four group for purposes of compensation if the group:

(a) Has rule-making authority, performs quasi-judicial functions, or has responsibility for the administration or policy direction of a state agency or program;

(b) Has duties that are deemed by the legislature to be of overriding sensitivity and importance to the public welfare and the operation of state government; and

(c) Requires service from its members representing a significant demand on their time that is normally in excess of one hundred hours of meeting time per year.

(2) Each member of a class four group is eligible to receive compensation in an amount not to exceed one hundred dollars for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group. A person shall not receive compensation for a day of service under this section if the person (a) occupies a position, normally regarded as full-time in nature, in any agency of the federal government, Washington state government, or Washington state local government; and (b) receives any compensation from such government for working that day.

(3) Compensation may be paid a member under this section only if it is authorized under the law dealing in particular with the specific group to which the member belongs or dealing in particular with the members of that specific group.

(4) Beginning July 1, 2010, through June 30, 2011, class four groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law. Meetings that require a member's physical presence at one location must be held in state facilities whenever possible(~~(-and)~~). Meetings conducted using private facilities must be approved by the director of the office of financial management, except for facilities provided free of charge. [2011 c 5 § 905; 2010 1st sp.s. c 7 § 145; 1984 c 287 § 5.]

Effective date—2011 c 5: See note following RCW 43.79.487.

43.03.250 Compensation of members of part-time boards and commissions—Class four groups (as amended by 2011 1st sp.s. c 21). (1) A part-time, statutory board, commission, council, committee, or other similar group shall be identified as a class four group for purposes of compensation if the group:

(a) Has rule-making authority, performs quasi-judicial functions, or has responsibility for the administration or policy direction of a state agency or program;

(b) Has duties that are deemed by the legislature to be of overriding sensitivity and importance to the public welfare and the operation of state government; and

(c) Requires service from its members representing a significant demand on their time that is normally in excess of one hundred hours of meeting time per year.

(2) Each member of a class four group is eligible to receive compensation in an amount not to exceed one hundred dollars for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group. A person shall not receive compensation for a day of service under this section if the person (a) occupies a position, normally regarded as full-time in nature, in any agency of the federal government, Washington state government, or Washington state local government; and (b) receives any compensation from such government for working that day.

(3) Compensation may be paid a member under this section only if it is authorized under the law dealing in particular with the specific group to which the member belongs or dealing in particular with the members of that specific group.

(4) ~~((Beginning July 1, 2010, through June 30, 2011,)) Class four groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law. ~~((Meetings that require a member's physical presence at one location must be held in state facilities whenever possible, and meetings conducted using private facilities must be approved by the director of the office of financial management.))~~ [2011 1st sp.s. c 21 § 58; 2010 1st sp.s. c 7 § 145; 1984 c 287 § 5.]~~

Reviser's note: RCW 43.03.250 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Legislative findings—Section headings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

43.03.265 Compensation of members of part-time boards and commissions—Class five groups (as amended by 2011 c 5). (1) Any part-time commission that has rule-making authority, performs quasi-judicial functions, has responsibility for the policy direction of a health profession credentialing program, and performs regulatory and licensing functions with respect to a health care profession licensed under Title 18 RCW shall be identified as a class five group for purposes of compensation.

(2) Except as otherwise provided in this section, each member of a class five group is eligible to receive compensation in an amount not to exceed two hundred fifty dollars for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group. A person shall not receive compensation for a day of service under this section if the person (a) occupies a position, normally regarded as full-time in nature, in any agency of the federal government, Washington state government, or Washington state local government; and (b) receives any compensation from such government for working that day.

(3) Compensation may be paid a member under this section only if it is necessarily incurred in the course of authorized business consistent with the responsibilities of the commission established by law.

(4) Beginning July 1, 2010, through June 30, 2011, no person designated as a member of a class five board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund. Exceptions may be granted under section 605, chapter 3, Laws of 2010. Class five groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law. Meetings that require a member's physical presence at one location must be held in state facilities whenever possible ~~(-and)~~. Meetings conducted using private facilities must be approved by the director of the office of financial management, except for facilities provided free of charge.

(5) Beginning July 1, 2010, through June 30, 2011, class five groups that are funded by sources other than the state general fund are encouraged to reduce travel, lodging, and other costs associated with conducting the business of the group including use of other meeting formats that do not require travel. [2011 c 5 § 906; 2010 1st sp.s. c 7 § 146; 1999 c 366 § 1.]

Effective date—2011 c 5: See note following RCW 43.79.487.

43.03.265 Compensation of members of part-time boards and commissions—Class five groups (as amended by 2011 1st sp.s. c 21). (1) Any part-time commission that has rule-making authority, performs quasi-judicial functions, has responsibility for the policy direction of a health profession credentialing program, and performs regulatory and licensing functions with respect to a health care profession licensed under Title 18 RCW shall be identified as a class five group for purposes of compensation.

(2) Except as otherwise provided in this section, each member of a class five group is eligible to receive compensation in an amount not to exceed two hundred fifty dollars for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group. A person shall not receive compensation for a day of service under this section if the person (a) occupies a position, normally regarded as full-time in nature, in any agency of the federal government, Washington state government, or Washington state local government; and (b) receives any compensation from such government for working that day.

(3) Compensation may be paid a member under this section only if it is necessarily incurred in the course of authorized business consistent with the responsibilities of the commission established by law.

(4) ~~((Beginning July 1, 2010, through June 30, 2011,)) No person designated as a member of a class five board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund. Exceptions may be granted under RCW 43.03.049 ~~((605, chapter 3, Laws of 2010)).~~ Class five groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law. ~~((Meetings that require a member's physical presence at one location must be held in state facilities whenever possible, and meetings conducted using private facilities must be approved by the director of the office of financial management.))~~~~

(5) ~~((Beginning July 1, 2010, through June 30, 2011,)) Class five groups that are funded by sources other than the state general fund are encouraged to reduce travel, lodging, and other costs associated with conducting the business of the group including use of other meeting formats that do not require travel. [2011 1st sp.s. c 21 § 59; 2010 1st sp.s. c 7 § 146; 1999 c 366 § 1.]~~

Reviser's note: RCW 43.03.265 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

43.03.305 Washington citizens' commission on salaries for elected officials—Generally (as amended by 2011 c 60). (Effective January 1, 2012.) There is created a commission to be known as the Washington citizens' commission on salaries for elected officials, to consist of sixteen members appointed by the governor as provided in this section.

(1) Nine of the sixteen commission members shall be selected by lot by the secretary of state from among those registered voters eligible to vote at the time persons are selected for appointment to full terms on the commission under subsection (3) of this section. One member shall be selected from each congressional district. The secretary shall establish policies and procedures for conducting the selection by lot. The policies and procedures shall include, but not be limited to, those for notifying persons selected and for providing a new selection from a congressional district if a person selected from the district declines appointment to the commission or if, following the person's appointment, the person's position on the commission becomes vacant before the end of the person's term of office.

(2) The remaining seven of the sixteen commission members, all residents of this state, shall be selected jointly by the speaker of the house of representatives and the president of the senate. The persons selected under this subsection shall have had experience in the field of personnel management. Of these seven members, one shall be selected from each of the following five sectors in this state: Private institutions of higher education; business; professional personnel management; legal profession; and organized labor. Of the two remaining members, one shall be a person recommended to the speaker and the president by the chair of the Washington personnel resources board and one shall be a person recommended by majority vote of the presidents of the state's four-year institutions of higher education.

(3) The secretary of state shall forward the names of persons selected under subsection (1) of this section and the speaker of the house of representatives and president of the senate shall forward the names of persons selected under subsection (2) of this section to the governor who shall appoint these persons to the commission. Except as provided in subsection (6) of this section, the names of persons selected for appointment to the com-

mission shall be forwarded to the governor not later than February 15, 1987, and not later than the fifteenth day of February every four years through 1999. The terms of the members selected in 1999 shall terminate July 1, 2002, and the names of persons selected for appointment to the commission shall be forwarded to the governor not later than July 1, 2002. Of the sixteen names forwarded to the governor in 2002, the governor shall by lot select four of the persons selected under subsection (1) of this section and four of the persons selected under subsection (2) of this section to serve two-year terms, with the rest of the members serving four-year terms. Thereafter, except as provided in subsection (6) of this section, all members shall serve four-year terms and the names of eight persons selected for appointment to the commission shall be forwarded to the governor not later than the first day of July every two years.

(4) No person may be appointed to more than two terms. No member of the commission may be removed by the governor during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, or malfeasance in office or for a disqualifying change of residence.

The unexcused absence of any person who is a member of the commission from two consecutive meetings of the commission shall constitute the relinquishment of that person's membership on the commission. Such a relinquishment creates a vacancy in that person's position on the commission. A member's absence may be excused by the chair of the commission upon the member's written request if the chair believes there is just cause for the absence. Such a request must be received by the chair before the meeting for which the absence is to be excused. A member's absence from a meeting of the commission may also be excused during the meeting for which the member is absent by the affirmative vote of a majority of the members of the commission present at the meeting.

(5) No state official, public employee, or lobbyist, or immediate family member of the official, employee, or lobbyist, subject to the registration requirements of chapter ~~(42.17)~~ 42.17A RCW is eligible for membership on the commission.

As used in this subsection the phrase "immediate family" means the parents, spouse or domestic partner, siblings, children, or dependent relative of the official, employee, or lobbyist whether or not living in the household of the official, employee, or lobbyist.

(6) Upon a vacancy in any position on the commission, a successor shall be selected and appointed to fill the unexpired term. The selection and appointment shall be concluded within thirty days of the date the position becomes vacant and shall be conducted in the same manner as originally provided. [2011 c 60 § 34; 2008 c 6 § 204; 1999 c 102 § 1; 1995 c 3 § 1; 1993 c 281 § 46; 1986 c 155 § 2.]

Effective date—2011 c 60: See RCW 42.17A.919.

43.03.305 Washington citizens' commission on salaries for elected officials—Generally (as amended by 2011 c 254). There is created a commission to be known as the Washington citizens' commission on salaries for elected officials, to consist of ~~(sixteen)~~ members appointed by the governor as provided in this section.

(1) ~~(Nine of the sixteen commission members shall be selected by lot by the secretary of state from among those registered voters eligible to vote at the time persons are selected for appointment to full terms on the commission under subsection (3) of this section. One member shall be selected from each congressional district.) One registered voter from each congressional district shall be selected by the secretary of state from among those registered voters eligible to vote at the time persons are selected for appointment to serve on the commission.~~ The secretary shall establish policies and procedures for conducting the selection by lot. The policies and procedures shall include, but not be limited to, those for notifying persons selected and for providing a new selection from a congressional district if a person selected from the district declines appointment to the commission or if, following the person's appointment, the person's position on the commission becomes vacant before the end of the person's term of office.

(2) ~~(The remaining seven of the sixteen)~~ Seven commission members, all residents of this state, shall be selected jointly by the speaker of the house of representatives and the president of the senate. The persons selected under this subsection shall have had experience in the field of personnel management. Of these seven members, one shall be selected from each of the following five sectors in this state: Private institutions of higher education; business; professional personnel management; legal profession; and organized labor. Of the two remaining members, one shall be a person recommended to the speaker and the president by the chair of the Washington personnel resources board and one shall be a person recommended by majority vote of the presidents of the state's four-year institutions of higher education.

(3) The secretary of state shall forward the names of persons selected under subsection (1) of this section and the speaker of the house of representatives and president of the senate shall forward the names of persons selected under subsection (2) of this section to the governor who shall appoint these persons to the commission. ~~Except (as provided in subsection (6) of this section, the names of persons selected for appointment to the commission shall be forwarded to the governor not later than February 15, 1987, and not later than the fifteenth day of February every four years through 1999. The terms of the members selected in 1999 shall terminate July 1, 2002, and the names of persons selected for appointment to the commission shall be forwarded to the governor not later than July 1, 2002. Of the sixteen names forwarded to the governor in 2002, the governor shall by lot select four of the persons selected under subsection (1) of this section and four of the persons selected under subsection (2) of this section to serve two-year terms, with the rest of the members serving four-year terms. Thereafter, except~~ as provided in subsection (6) of this section, all members shall serve four-year terms and the names of ~~(eight)~~ the persons selected for appointment to the commission shall be forwarded to the governor not later than the first day of July every two years.

(4) No person may be appointed to more than two terms. No member of the commission may be removed by the governor during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, or malfeasance in office or for a disqualifying change of residence.

The unexcused absence of any person who is a member of the commission from two consecutive meetings of the commission shall constitute the relinquishment of that person's membership on the commission. Such a relinquishment creates a vacancy in that person's position on the commission. A member's absence may be excused by the chair of the commission upon the member's written request if the chair believes there is just cause for the absence. Such a request must be received by the chair before the meeting for which the absence is to be excused. A member's absence from a meeting of the commission may also be excused during the meeting for which the member is absent by the affirmative vote of a majority of the members of the commission present at the meeting.

(5) No state official, public employee, or lobbyist, or immediate family member of the official, employee, or lobbyist, subject to the registration requirements of chapter ~~*42.17~~ 42.17A RCW is eligible for membership on the commission.

As used in this subsection the phrase "immediate family" means the parents, spouse or domestic partner, siblings, children, or dependent relative of the official ~~(employee)~~ or lobbyist whether or not living in the household of the official ~~(employee)~~ or lobbyist, and the parent, spouse or domestic partner, sibling, child, or dependent relative of the employee, living in the household of the employee or who is dependent in whole or in part for his or her support upon the earnings of the state employee.

(6)(a) Upon a vacancy in any position on the commission, a successor shall be selected and appointed to fill the unexpired term. The selection and appointment shall be concluded within thirty days of the date the position becomes vacant and shall be conducted in the same manner as originally provided.

(b) Initial members appointed from congressional districts created after July 22, 2011, shall be selected and appointed in the manner provided in subsection (1) of this section. The selection and appointment must be concluded within ninety days of the date the district is created. The term of an initial member appointed under this subsection terminates July 1st of an even-numbered year so that at no point may the terms of more than one-half plus one of the members selected under subsection (1) of this section terminate in the same year. [2011 c 254 § 1; 2008 c 6 § 204; 1999 c 102 § 1; 1995 c 3 § 1; 1993 c 281 § 46; 1986 c 155 § 2.]

Reviser's note: *(1) Provisions in chapter 42.17 RCW relating to campaign finance were recodified in chapter 42.17A RCW by 2010 c 204, effective January 1, 2012.

(2) RCW 43.03.305 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Additional notes found at www.leg.wa.gov

43.03.3051 Elected officials—Voluntary salary reduction. (1) From July 1, 2011, through June 29, 2013, any state elected official of the executive branch may voluntarily reduce his or her salary from that established pursuant

to Article XXVIII, section 1 of the state Constitution by three percent.

(2) The department of personnel and office of financial management shall develop a form to be used by any state elected official of the executive branch to execute the salary reduction under subsection (1) of this section through the state's central personnel payroll system.

(3) A voluntary reduction in salary shall be effective and continue through June 29, 2013, unless the state elected official of the executive branch directs in writing that the department of personnel discontinue the reduction. [2011 1st sp.s. c 39 § 2.]

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Chapter 43.06 RCW GOVERNOR

Sections

43.06.013	Requests for nonconviction criminal history fingerprint record checks for agency heads—"Agency head" defined.
43.06.240	State of emergency—Disorderly conduct after emergency proclaimed—Penalty.
43.06.400	Listing of reduction in revenues from tax exemptions to be submitted to legislature by department of revenue—Periodic review and submission of recommendations to legislature by governor.
43.06.410	State internship program—Governor's duties.
43.06.425	Interns—Effect of employment experience—Rights of reversion—Fringe benefits—Sick and vacation leave.

43.06.013 Requests for nonconviction criminal history fingerprint record checks for agency heads—"Agency head" defined. When requested by the governor or the director of the department of enterprise services, non-conviction criminal history fingerprint record checks shall be conducted through the Washington state patrol identification and criminal history section and the federal bureau of investigation on applicants for agency head positions appointed by the governor. Information received pursuant to this section shall be confidential and made available only to the governor or director of the department of personnel or their employees directly involved in the selection, hiring, or background investigation of the subject of the record check. When necessary, applicants may be employed on a conditional basis pending completion of the criminal history record check. "Agency head" as used in this section has the same definition as provided in RCW 34.05.010. [2011 1st sp.s. c 43 § 454; 2006 c 45 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.06.240 State of emergency—Disorderly conduct after emergency proclaimed—Penalty. After the proclamation of a state of emergency pursuant to RCW 43.06.010, every person who:

(1) Wilfully causes public inconvenience, annoyance, or alarm, or recklessly creates a risk thereof, by:

(a) engaging in fighting or in violent, tumultuous, or threatening behavior; or

(b) making an unreasonable noise or an offensively coarse utterance, gesture, or display, or addressing abusive language to any person present; or

(c) dispersing any lawful procession or meeting of persons, not being a peace officer of this state and without lawful authority; or

(d) creating a hazardous or physically offensive condition which serves no legitimate purpose; or

(2) Engages with at least one other person in a course of conduct as defined in subsection (1) of this section which is likely to cause substantial harm or serious inconvenience, annoyance, or alarm, and refuses or knowingly fails to obey an order to disperse made by a peace officer shall be guilty of disorderly conduct and be punished by imprisonment in the county jail for up to three hundred sixty-four days or fined not more than one thousand dollars or by both fine and imprisonment. [2011 c 96 § 27; 1969 ex.s. c 186 § 5.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

43.06.400 Listing of reduction in revenues from tax exemptions to be submitted to legislature by department of revenue—Periodic review and submission of recommendations to legislature by governor. (1) Beginning in January 1984, and in January of every fourth year thereafter, the department of revenue must submit to the legislature prior to the regular session a listing of the amount of reduction for the current and next biennium in the revenues of the state or the revenues of local government collected by the state as a result of tax exemptions. The listing must include an estimate of the revenue lost from the tax exemption, the purpose of the tax exemption, the persons, organizations, or parts of the population which benefit from the tax exemption, and whether or not the tax exemption conflicts with another state program. The listing must include but not be limited to the following revenue sources:

(a) Real and personal property tax exemptions under Title 84 RCW;

(b) Business and occupation tax exemptions, deductions, and credits under chapter 82.04 RCW;

(c) Retail sales and use tax exemptions under chapters 82.08, 82.12, and 82.14 RCW;

(d) Public utility tax exemptions and deductions under chapter 82.16 RCW;

(e) Food fish and shellfish tax exemptions under chapter 82.27 RCW;

(f) Leasehold excise tax exemptions under chapter 82.29A RCW;

(g) Motor vehicle and special fuel tax exemptions and refunds under chapters 82.36 and 82.38 RCW;

(h) Aircraft fuel tax exemptions under chapter 82.42 RCW;

(i) Motor vehicle excise tax exclusions under chapter 82.44 RCW; and

(j) Insurance premiums tax exemptions under chapter 48.14 RCW.

(2) The department of revenue must prepare the listing required by this section with the assistance of any other agencies or departments as may be required.

(3) The department of revenue must present the listing to the ways and means committees of each house in public hearings.

(4) Beginning in January 1984, and every four years thereafter the governor is requested to review the report from

the department of revenue and may submit recommendations to the legislature with respect to the repeal or modification of any tax exemption. The ways and means committees of each house and the appropriate standing committee of each house must hold public hearings and take appropriate action on the recommendations submitted by the governor.

(5) As used in this section, "tax exemption" means an exemption, exclusion, or deduction from the base of a tax; a credit against a tax; a deferral of a tax; or a preferential tax rate.

(6) For purposes of the listing due in January 2012, the department of revenue does not have to prepare or update the listing with respect to any tax exemption that would not be likely to increase state revenue if the exemption was repealed or otherwise eliminated. [2011 1st sp.s. c 20 § 201; 1999 c 372 § 5; 1987 c 472 § 16; 1983 2nd ex.s. c 3 § 60.]

Review and termination of tax preferences: Chapter 43.136 RCW.

Additional notes found at www.leg.wa.gov

43.06.410 State internship program—Governor's duties. There is established within the office of the governor the Washington state internship program to assist students and state employees in gaining valuable experience and knowledge in various areas of state government. In administering the program, the governor shall:

(1) Consult with the secretary of state, the director of enterprise services, the commissioner of the employment security department, and representatives of labor;

(2) Encourage and assist agencies in developing intern positions;

(3) Develop and coordinate a selection process for placing individuals in intern positions. This selection process shall give due regard to the responsibilities of the state to provide equal employment opportunities;

(4) Develop and coordinate a training component of the internship program which balances the need for training and exposure to new ideas with the intern's and agency's need for on-the-job work experience;

(5) Work with institutions of higher education in developing the program, soliciting qualified applicants, and selecting participants; and

(6) Develop guidelines for compensation of the participants. [2011 1st sp.s. c 43 § 455; 1993 c 281 § 47; 1985 c 442 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.06.425 Interns—Effect of employment experience—Rights of reversion—Fringe benefits—Sick and vacation leave. The director of financial management or the director's designee shall adopt rules to provide that:

(1) Successful completion of an internship under RCW 43.06.420 shall be considered as employment experience at the level at which the intern was placed;

(2) Persons leaving classified or exempt positions in state government in order to take an internship under RCW 43.06.420: (a) Have the right of reversion to the previous position at any time during the internship or upon completion of the internship; and (b) shall continue to receive all fringe

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benefits as if they had never left their classified or exempt positions;

(3) Participants in the undergraduate internship program who were not public employees prior to accepting a position in the program receive sick leave allowances commensurate with other state employees;

(4) Participants in the executive fellows program who were not public employees prior to accepting a position in the program receive sick and vacation leave allowances commensurate with other state employees. [2011 1st sp.s. c 43 § 456; 2002 c 354 § 229; 1993 c 281 § 48; 1985 c 442 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

State internship program—Positions exempt from chapter 41.06 RCW: RCW 41.06.088.

Additional notes found at www.leg.wa.gov

Chapter 43.07 RCW SECRETARY OF STATE

Sections

43.07.129	Washington state heritage center account.
43.07.200	Department of revenue as secretary of state's agent for legal entity renewals.

43.07.129 Washington state heritage center account.

The Washington state heritage center account is created in the custody of the state treasurer. All moneys received under RCW 36.18.010(11) and 43.07.128 must be deposited in the account. Expenditures from the account may be made only for the following purposes:

(1) Payment of the certificate of participation issued for the Washington state heritage center;

(2) Capital maintenance of the Washington state heritage center; and

(3) Program operations that serve the public, relate to the collections and exhibits housed in the Washington state heritage center, or fulfill the missions of the state archives, state library, and capital museum.

Only the secretary of state or the secretary of state's designee may authorize expenditures from the account. An appropriation is not required for expenditures, but the account is subject to allotment procedures under chapter 43.88 RCW. During the 2011-2013 fiscal biennium, the legislature may appropriate from the Washington state heritage center account for the purposes of state arts, historical, and library programs. [2011 1st sp.s. c 50 § 940; 2007 c 523 § 4.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Contingency—2007 c 523: See note following RCW 43.07.128.

43.07.200 Department of revenue as secretary of state's agent for legal entity renewals. The secretary of state and the director of revenue may enter into agreements designating the department of revenue as the secretary of state's agent for issuing all or a portion of the legal entity renewals within the jurisdiction of the secretary of state. [2011 c 298 § 24; 1982 c 182 § 12.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Business license center act: Chapter 19.02 RCW.

Certain business or professional activity licenses exempt: RCW 19.02.800.

Master license system—Existing licenses or permits registered under, when: RCW 19.02.810.

Chapter 43.08 RCW STATE TREASURER

Sections

- 43.08.061 Warrants—Department of enterprise services—Printing—Retention of redeemed warrants.
43.08.190 State treasurer's service fund—Creation—Purpose.

43.08.061 Warrants—Department of enterprise services—Printing—Retention of redeemed warrants. The department of enterprise services is responsible for the printing of all state treasury warrants for distribution as directed by the state treasurer. All warrants redeemed by the state treasurer shall be retained for a period of one year, following their redemption, after which they may be destroyed without regard to the requirements imposed for their destruction by chapter 40.14 RCW. [2011 1st sp.s. c 43 § 305; 1993 c 38 § 1; 1981 c 10 § 1; 1975 c 48 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Actions against state on redeemed warrants, time limitation: RCW 4.92.200.

43.08.190 State treasurer's service fund—Creation—Purpose. There is hereby created a fund within the state treasury to be known as the "state treasurer's service fund." Such fund shall be used solely for the payment of costs and expenses incurred in the operation and administration of the state treasurer's office.

Moneys shall be allocated monthly and placed in the state treasurer's service fund equivalent to a maximum of one percent of the trust and treasury average daily cash balances from the earnings generated under the authority of RCW 43.79A.040 and 43.84.080 other than earnings generated from investment of balances in funds and accounts specified in RCW 43.79A.040(4)(c). The allocation shall precede the distribution of the remaining earnings as prescribed under RCW 43.79A.040 and 43.84.092. The state treasurer shall establish a uniform allocation rate for all funds and accounts; except that the state treasurer may negotiate a different allocation rate with any state agency that has independent authority over funds not statutorily required to be held in the state treasury or in the custody of the state treasurer. In no event shall the rate be less than the actual costs incurred by the state treasurer's office. If no rate is separately negotiated, the default rate for any funds held shall be the rate set for funds held pursuant to statute.

During the 2009-2011 fiscal biennium and the 2011-2013 fiscal biennium, the legislature may transfer from the state treasurer's service fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2011 1st sp.s. c 50 § 941; 2010 c 222 § 3; 2009 c 564 § 926; 2008 c 329 § 912; 2005 c 518 § 925; 2003 1st sp.s. c 25 § 916; 1991 sp.s. c 13 § 83; 1985 c 405 § 506; 1973 c 27 § 2.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Intent—2010 c 222: See note following RCW 43.08.150.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Additional notes found at www.leg.wa.gov

Chapter 43.09 RCW STATE AUDITOR

Sections

- 43.09.465 Comprehensive performance audit of state printing services.
43.09.475 Performance audits of government account.

43.09.465 Comprehensive performance audit of state printing services. By November 1, 2016, building on the findings of the 2011 audit, the state auditor shall conduct a comprehensive performance audit of state printing services in accordance with RCW 43.09.470. Following the audit in 2016, the state auditor shall conduct follow-up audits as deemed necessary to ensure effective implementation of chapter 43, Laws of 2011 1st sp. sess. [2011 1st sp.s. c 43 § 310.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.09.475 Performance audits of government account. The performance audits of government account is hereby created in the custody of the state treasurer. Revenue identified in RCW 82.08.020(5) and 82.12.0201 shall be deposited in the account. Money in the account shall be used to fund the performance audits and follow-up performance audits under RCW 43.09.470 and shall be expended by the state auditor in accordance with chapter 1, Laws of 2006. Only the state auditor or the state auditor's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. During the 2009-2011 fiscal biennium, the legislature may transfer from the performance audits of government account to the state general fund such amounts as deemed to be appropriate or necessary. During [the] 2011-2013 fiscal biennium, the performance audits of government account may be appropriated for fraud investigations in the state auditor's office and the department of social and health services, audit and collection functions in the department of revenue, and audits of school districts. In addition, during the 2011-2013 fiscal biennium the account may be used to fund the office of financial management's contract for the compliance audit of the state auditor. [2011 1st sp.s. c 50 § 942; 2009 c 564 § 929; 2006 c 1 § 5 (Initiative Measure No. 900, approved November 8, 2005).]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

Policies and purposes—Construction—Severability—Part headings not law—2006 c 1 (Initiative Measure No. 900): See notes following RCW 43.09.470.

Chapter 43.12 RCW

COMMISSIONER OF PUBLIC LANDS

Sections

43.12.065 Rules pertaining to public use of state lands—Enforcement—Penalty.

43.12.065 Rules pertaining to public use of state lands—Enforcement—Penalty. (1) For the promotion of the public safety and the protection of public property, the department of natural resources may, in accordance with chapter 34.05 RCW, issue, promulgate, adopt, and enforce rules pertaining to use by the public of state-owned lands and property which are administered by the department.

(2)(a) Except as otherwise provided in this subsection, a violation of any rule adopted under this section is a misdemeanor.

(b) Except as provided in (c) of this subsection, the department may specify by rule, when not inconsistent with applicable statutes, that violation of such a rule is an infraction under chapter 7.84 RCW. However, any violation of a rule relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(c) Violation of such a rule equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

(3) The commissioner of public lands and those employees as the commissioner may designate shall be vested with police powers when enforcing:

(a) The rules of the department adopted under this section;

(b) The civil infractions created under RCW 79A.80.080; or

(c) The general criminal statutes or ordinances of the state or its political subdivisions where enforcement is necessary for the protection of state-owned lands and property.

(4) The commissioner of public lands may, under the provisions of RCW 7.84.140, enter into an agreement allowing employees of the state parks and recreation commission and the department of fish and wildlife to enforce certain civil infractions created under this title. [2011 c 320 § 16; 2003 c 53 § 229; 1987 c 380 § 14; 1979 ex.s. c 136 § 38; 1969 ex.s. c 160 § 1. Formerly RCW 43.30.310.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

Findings—Intent—2011 c 320: See RCW 79A.80.005.

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

Additional notes found at www.leg.wa.gov

Chapter 43.15 RCW

OFFICE OF LIEUTENANT GOVERNOR

Sections

43.15.020 President of the senate—Committee and board appointments and assignments.

43.15.020 President of the senate—Committee and board appointments and assignments. The lieutenant governor serves as president of the senate and is responsible for making appointments to, and serving on, the committees and boards as set forth in this section.

(1) The lieutenant governor serves on the following boards and committees:

(a) Capitol furnishings preservation committee, RCW 27.48.040;

(b) Washington higher education facilities authority, RCW 28B.07.030;

(c) Productivity board, also known as the employee involvement and recognition board, RCW 41.60.015;

(d) State finance committee, RCW 43.33.010;

(e) State capitol committee, RCW 43.34.010;

(f) Washington health care facilities authority, RCW 70.37.030;

(g) State medal of merit nominating committee, RCW 1.40.020;

(h) Medal of valor committee, RCW 1.60.020; and

(i) Association of Washington generals, RCW 43.15.030.

(2) The lieutenant governor, and when serving as president of the senate, appoints members to the following boards and committees:

(a) Civil legal aid oversight committee, RCW 2.53.010;

(b) Office of public defense advisory committee, RCW 2.70.030;

(c) Washington state gambling commission, RCW 9.46.040;

(d) Sentencing guidelines commission, RCW 9.94A.860;

(e) State building code council, RCW 19.27.070;

(f) Financial education public-private partnership, RCW 28A.300.450;

(g) Joint administrative rules review committee, RCW 34.05.610;

(h) Capital projects advisory review board, RCW 39.10.220;

(i) Select committee on pension policy, RCW 41.04.276;

(j) Legislative ethics board, RCW 42.52.310;

(k) Washington citizens' commission on salaries, RCW 43.03.305;

(l) Legislative oral history committee, RCW 44.04.325;

(m) State council on aging, RCW 43.20A.685;

(n) State investment board, RCW 43.33A.020;

(o) Capitol campus design advisory committee, RCW 43.34.080;

(p) Washington state arts commission, RCW 43.46.015;

(q) Information services board, *RCW 43.105.032;

(r) Council for children and families, **RCW 43.121.020;

(s) PNWER-Net working subgroup under chapter 43.147 RCW;

(t) Community economic revitalization board, RCW 43.160.030;

(u) Washington economic development finance authority, RCW 43.163.020;

(v) Life sciences discovery fund authority, RCW 43.350.020;

(w) Legislative children's oversight committee, RCW 44.04.220;

(x) Joint legislative audit and review committee, RCW 44.28.010;

(y) Joint committee on energy supply and energy conservation, RCW 44.39.015;

(z) Legislative evaluation and accountability program committee, RCW 44.48.010;

(aa) Agency council on coordinated transportation, RCW 47.06B.020;

(bb) Washington horse racing commission, RCW 67.16.014;

(cc) Correctional industries board of directors, RCW 72.09.080;

(dd) Joint committee on veterans' and military affairs, RCW 73.04.150;

(ee) Joint legislative committee on water supply during drought, RCW 90.86.020;

(ff) Statute law committee, RCW 1.08.001; and

(gg) Joint legislative oversight committee on trade policy, RCW 44.55.020. [2011 c 158 § 12. Prior: 2010 1st sp.s. c 7 § 136; 2010 1st sp.s. c 7 § 135; 2010 c 271 § 704; 2009 c 560 § 27; 2008 c 152 § 9; 2006 c 317 § 4.]

Reviser's note: *(1) RCW 43.105.032 was repealed by 2011 1st sp.s. c 43 § 1013.

** (2) RCW 43.121.020 was repealed by 2011 1st sp.s. c 32 § 12.

Transfer of residual funds to manufactured home installation training account—2011 c 158: See note following RCW 43.22A.100.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560: See notes following RCW 18.06.080.

Findings—Intent—2008 c 152: See note following RCW 13.34.136.

Chapter 43.17 RCW

ADMINISTRATIVE DEPARTMENTS AND AGENCIES—GENERAL PROVISIONS

Sections

43.17.010	Departments created.
43.17.020	Chief executive officers—Appointment.
43.17.320	Interagency disputes—Alternative dispute resolution—Definitions. (<i>Effective January 1, 2012.</i>)

43.17.010 Departments created. There shall be departments of the state government which shall be known as (1) the department of social and health services, (2) the department of ecology, (3) the department of labor and industries, (4) the department of agriculture, (5) the department of fish and wildlife, (6) the department of transportation, (7) the department of licensing, (8) the department of enterprise services, (9) the department of commerce, (10) the department of veterans affairs, (11) the department of revenue, (12) the department of retirement systems, (13) the department of corrections, (14) the department of health, (15) the department of financial institutions, (16) the department of archaeology and historic preservation, (17) the department of early learning, and (18) the Puget Sound partnership, which shall be charged with the execution, enforcement, and administration

of such laws, and invested with such powers and required to perform such duties, as the legislature may provide. [2011 1st sp.s. c 43 § 107; 2009 c 565 § 25; 2007 c 341 § 46; 2006 c 265 § 111; 2005 c 333 § 10. Prior: 1993 sp.s. c 2 § 16; 1993 c 472 § 17; 1993 c 280 § 18; 1989 1st ex.s. c 9 § 810; 1987 c 506 § 2; 1985 c 466 § 47; 1984 c 125 § 12; 1981 c 136 § 61; 1979 c 10 § 1; prior: 1977 ex.s. c 334 § 5; 1977 ex.s. c 151 § 20; 1977 c 7 § 1; prior: 1975-'76 2nd ex.s. c 115 § 19; 1975-'76 2nd ex.s. c 105 § 24; 1971 c 11 § 1; prior: 1970 ex.s. c 62 § 28; 1970 ex.s. c 18 § 50; 1969 c 32 § 1; prior: 1967 ex.s. c 26 § 12; 1967 c 242 § 12; 1965 c 156 § 20; 1965 c 8 § 43.17.010; prior: 1957 c 215 § 19; 1955 c 285 § 2; 1953 c 174 § 1; prior: (i) 1937 c 111 § 1, part; RRS § 10760-2, part. (ii) 1935 c 176 § 1; 1933 c 3 § 1; 1929 c 115 § 1; 1921 c 7 § 2; RRS § 10760. (iii) 1945 c 267 § 1, part; Rem. Supp. 1945 § 10459-1, part. (iv) 1947 c 114 § 5; Rem. Supp. 1947 § 10786-10c.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Department of

agriculture: Chapter 43.23 RCW.

commerce: Chapter 43.330 RCW.

corrections: Chapter 72.09 RCW.

ecology: Chapter 43.21A RCW.

employment security: Chapter 50.08 RCW.

financial institutions: Chapter 43.320 RCW.

fish and wildlife: Chapters 43.300 and 77.04 RCW.

general administration: Chapter 43.19 RCW.

health: Chapter 43.70 RCW.

information services: Chapter 43.105 RCW.

labor and industries: Chapter 43.22 RCW.

licensing: Chapters 43.24, 46.01 RCW.

natural resources: Chapter 43.30 RCW.

personnel: Chapter 41.06 RCW.

retirement systems: Chapter 41.50 RCW.

revenue: Chapter 82.01 RCW.

services for the blind: Chapter 74.18 RCW.

social and health services: Chapter 43.20A RCW.

transportation: Chapter 47.01 RCW.

veterans affairs: Chapter 43.60A RCW.

Additional notes found at www.leg.wa.gov

43.17.020 Chief executive officers—Appointment.

There shall be a chief executive officer of each department to be known as: (1) The secretary of social and health services, (2) the director of ecology, (3) the director of labor and industries, (4) the director of agriculture, (5) the director of fish and wildlife, (6) the secretary of transportation, (7) the director of licensing, (8) the director of enterprise services, (9) the director of commerce, (10) the director of veterans affairs, (11) the director of revenue, (12) the director of retirement systems, (13) the secretary of corrections, (14) the secretary of health, (15) the director of financial institutions, (16) the director of the department of archaeology and historic preservation, (17) the director of early learning, and (18) the executive director of the Puget Sound partnership.

Such officers, except the director of fish and wildlife, shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. The

director of fish and wildlife shall be appointed by the fish and wildlife commission as prescribed by RCW 77.04.055. [2011 1st sp.s. c 43 § 108; 2009 c 565 § 26; 2007 c 341 § 47; 2006 c 265 § 112. Prior: 2005 c 333 § 11; 2005 c 319 § 2; 1995 1st sp.s. c 2 § 2 (Referendum Bill No. 45, approved November 7, 1995); prior: 1993 sp.s. c 2 § 17; 1993 c 472 § 18; 1993 c 280 § 19; 1989 1st ex.s. c 9 § 811; 1987 c 506 § 3; 1985 c 466 § 48; 1984 c 125 § 13; 1981 c 136 § 62; 1979 c 10 § 2; prior: 1977 ex.s. c 334 § 6; 1977 ex.s. c 151 § 21; 1977 c 7 § 2; prior: 1975-'76 2nd ex.s. c 115 § 20; 1975-'76 2nd ex.s. c 105 § 25; 1971 c 11 § 2; prior: 1970 ex.s. c 62 § 29; 1970 ex.s. c 18 § 51; 1969 c 32 § 2; prior: 1967 ex.s. c 26 § 13; 1967 c 242 § 13; 1965 c 156 § 21; 1965 c 8 § 43.17.020; prior: 1957 c 215 § 20; 1955 c 285 § 3; 1953 c 174 § 2; prior: (i) 1935 c 176 § 2; 1933 c 3 § 2; 1929 c 115 § 2; 1921 c 7 § 3; RRS § 10761. (ii) 1937 c 111 § 1, part; RRS § 10760. (iii) 1945 c 267 § 1, part; Rem. Supp. 1945 § 10459-1, part.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Findings—Intent—2005 c 319: "The legislature finds that it is in the interest of the state to restructure the roles and responsibilities of the state's transportation agencies in order to improve efficiency and accountability. The legislature also finds that continued citizen oversight of the state's transportation system remains an important priority. To achieve these purposes, the legislature intends to provide direct accountability of the department of transportation to the governor, in his or her role as chief executive officer of state government, by making the secretary of transportation a cabinet-level official. Additionally, it is essential to clearly delineate between the separate and distinct roles and responsibilities of the executive and legislative branches of government. The role of executive is to oversee the implementation of transportation programs, while the legislature reserves to itself the role of policymaking. Finally, consolidating public outreach and auditing of the state's transportation agencies under a single citizen-governed entity, the transportation commission, will provide the public with information about the performance of the transportation system and an avenue for direct participation in its oversight." [2005 c 319 § 1.]

Part headings—2005 c 319: "Part headings used in this act are no part of the law." [2005 c 319 § 142.]

Effective dates—2005 c 319: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005, except for section 103 of this act which takes effect July 1, 2006." [2005 c 319 § 145.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Additional notes found at www.leg.wa.gov

43.17.320 Interagency disputes—Alternative dispute resolution—Definitions. (Effective January 1, 2012.) For purposes of RCW 43.17.320 through 43.17.340, "state agency" means:

(1) Any agency for which the executive officer is listed in RCW 42.17A.705(1); and

(2) The office of the secretary of state; the office of the state treasurer; the office of the state auditor; the department of natural resources; the office of the insurance commissioner; and the office of the superintendent of public instruction. [2011 c 60 § 35; 1993 c 279 § 2.]

Effective date—2011 c 60: See RCW 42.17A.919.

Intent—1993 c 279: "It is the intent of the legislature to reduce the number of time-consuming and costly lawsuits between state agencies by

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establishing alternative dispute resolution processes available to any agency." [1993 c 279 § 1.]

Chapter 43.19 RCW

DEPARTMENT OF ENTERPRISE SERVICES

(Formerly: Department of General Administration)

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43.19.620	Motor vehicle transportation service—Rules and regulations.

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- 43.19.900 Transfer of powers, duties, functions, and assets of department of general administration.
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- 43.19.903 Transfer of certain powers, duties, functions, and assets of the department of personnel.
- 43.19.904 Transfer of certain powers, duties, functions, and assets of the office of financial management.

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

(1) "Department" means the department of enterprise services.

(2) "Director" means the director of enterprise services. [2011 1st sp.s. c 43 § 102.]

Effective date—2011 1st sp.s. c 43: "Except for sections 109, 448, 462, and 732 of this act, this act takes effect October 1, 2011." [2011 1st sp.s. c 43 § 1017.]

Purpose—2011 1st sp.s. c 43: "To maximize the benefits to the public, state government should be operated in an efficient and effective manner. The department of enterprise services is created to provide centralized lead-

ership in efficiently and cost-effectively managing resources necessary to support the delivery of state government services. The mission of the department is to implement a world-class, customer-focused organization that provides valued products and services to government and state residents." [2011 1st sp.s. c 43 § 101.]

43.19.005 Department created—Powers and duties—Public benefit nonprofit corporation defined. (1) The department of enterprise services is created as an executive branch agency. The department is vested with all powers and duties transferred to it under chapter 43, Laws of 2011 1st sp. sess. and such other powers and duties as may be authorized by law.

(2) In addition to the powers and duties as provided in chapter 43, Laws of 2011 1st sp. sess., the department shall:

(a) Provide products and services to support state agencies, and may enter into agreements with any other governmental entity or a public benefit nonprofit organization, in compliance with RCW 39.34.055, to furnish such products and services as deemed appropriate by both parties. The agreement shall provide for the reimbursement to the department of the reasonable cost of the products and services furnished. All governmental entities of this state may enter into such agreements, unless otherwise prohibited; and

(b) Make available to state, local, and federal agencies, local governments, and public benefit nonprofit corporations on a full cost-recovery basis information and printing services to include equipment acquisition assistance, including leasing, brokering, and establishing master contracts. For the purposes of this section "public benefit nonprofit corporation" means a public benefit nonprofit corporation as defined in RCW 24.03.005 that is receiving local, state, or federal funds either directly or through a public agency other than an Indian tribe or political subdivision of another state. [2011 1st sp.s. c 43 § 103.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.008 Director—Executive powers and management—Review of programs and services—Audit. (1) The executive powers and management of the department shall be administered as described in this section.

(2) The executive head and appointing authority of the department is the director. The director is appointed by the governor, subject to confirmation by the senate. The director serves at the pleasure of the governor. The director is paid a salary fixed by the governor in accordance with RCW 43.03.040. If a vacancy occurs in the position of director while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate at which time he or she shall present to that body his or her nomination for the position.

(3) The director may employ staff members, who are exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter, and such other duties as may be authorized by law. The director may delegate any power or duty vested in him or her by chapter 43, Laws of 2011 1st sp. sess. or other law, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW.

(4) The internal affairs of the department are under the control of the director in order that the director may manage

the department in a flexible and intelligent manner as dictated by changing contemporary circumstances. Unless specifically limited by law, the director has complete charge and supervisory powers over the department. The director may create the administrative structures as the director deems appropriate, except as otherwise specified by law, and the director may employ personnel as may be necessary in accordance with chapter 41.06 RCW, except as otherwise provided by law.

(5) Until June 30, 2018, at the beginning of each fiscal biennium, the office of financial management shall conduct a review of the programs and services that are performed by the department to determine whether the program or service may be performed by the private sector in a more cost-efficient and effective manner than being performed by the department. In conducting this review, the office of financial management shall:

(a) Examine the existing activities currently being performed by the department, including but not limited to an examination of services for their performance, staffing, capital requirements, and mission. Programs may be broken down into discrete services or activities or reviewed as a whole; and

(b) Examine the activities to determine which specific services are available in the marketplace and what potential for efficiency gains or savings exist.

(i) As part of the review in this subsection (5), the office of financial management shall select up to six activities or services that have been determined as an activity that may be provided by the private sector in a cost-effective and efficient manner, including for the 2011-2013 fiscal biennium the bulk printing services. The office of financial management may consult with affected industry stakeholders in making its decision on which activities to contract for services. Priority for selection shall be given to agency activities or services that are significant, ongoing functions.

(ii) The office of financial management must consider the consequences and potential mitigation of improper or failed performance by the contractor.

(iii) For each of the selected activities, the department shall use a request for information, request for proposal, or other procurement process to determine if a contract for the activity would result in the activity being provided at a reduced cost and with greater efficiency.

(iv) The request for information, request for proposal, or other procurement process must contain measurable standards for the performance of the contract.

(v) The department may contract with one or more vendors to provide the service as a result of the procurement process.

(vi) If the office of financial management determines via the procurement process that the activity cannot be provided by the private sector at a reduced cost and greater efficiency, the department of enterprise services may cancel the procurement without entering into a contract and shall promptly notify the legislative fiscal committees of such a decision.

(vii) The department of enterprise services, in consultation with the office of financial management, must establish a contract monitoring process to measure contract performance, costs, service delivery quality, and other contract standards, and to cancel contracts that do not meet those stan-

dards. No contracts may be renewed without a review of these measures.

(viii) The office of financial management shall prepare a biennial report summarizing the results of the examination of the agency's programs and services. In addition to the programs and services examined and the result of the examination, the report shall provide information on any procurement process that does not result in a contract for the services. During each regular legislative session held in odd-numbered years, the legislative fiscal committees shall hold a public hearing on the report and the department's activities under this section.

(ix) The joint legislative audit and review committee shall conduct an audit of the implementation of this subsection (5), and report to the legislature by January 1, 2018, on the results of the audit. The report must include an estimate of additional costs or savings to taxpayers as a result of the contracting out provisions. [2011 1st sp.s. c 43 § 104.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.010 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.19.011 Director—Powers and duties. (1) The director of enterprise services shall supervise and administer the activities of the department of enterprise services and shall advise the governor and the legislature with respect to matters under the jurisdiction of the department.

(2) In addition to other powers and duties granted to the director, the director shall have the following powers and duties:

(a) Enter into contracts on behalf of the state to carry out the purposes of this chapter;

(b) Accept and expend gifts and grants that are related to the purposes of this chapter, whether such grants be of federal or other funds;

(c) Appoint deputy and assistant directors and such other special assistants as may be needed to administer the department. These employees are exempt from the provisions of chapter 41.06 RCW;

(d) Adopt rules in accordance with chapter 34.05 RCW and perform all other functions necessary and proper to carry out the purposes of this chapter;

(e) Delegate powers, duties, and functions as the director deems necessary for efficient administration, but the director shall be responsible for the official acts of the officers and employees of the department;

(f) Apply for grants from public and private entities, and receive and administer any grant funding received for the purpose and intent of this chapter; and

(g) Perform other duties as are necessary and consistent with law.

(3) The director may establish additional advisory groups as may be necessary to carry out the purposes of this chapter. [2011 1st sp.s. c 43 § 201; 1999 c 229 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.025 Enterprise services account. The enterprise services account is created in the custody of the state trea-

surer and shall be used for all activities previously budgeted and accounted for in the following internal service funds: The motor transport account, the enterprise services management fund, the enterprise services facilities and services revolving fund, the central stores revolving fund, the surplus property purchase revolving fund, and the energy efficiency services account. Only the director or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW. [2011 1st sp.s. c 43 § 202; 2002 c 332 § 3; 2001 c 292 § 2; 1998 c 105 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Effective date—2002 c 332: See notes following RCW 43.19.760.

Additional notes found at www.leg.wa.gov

43.19.035 Commemorative works account. (1) The commemorative works account is created in the custody of the state treasurer and shall be used by the department of enterprise services for the ongoing care, maintenance, and repair of commemorative works on the state capitol grounds. Only the director or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not necessary for expenditures.

(2) For purposes of this section, "state capitol grounds" means buildings and land owned by the state and otherwise designated as state capitol grounds, including the west capitol campus, the east capitol campus, the north capitol campus, the Tumwater campus, the Lacey campus, Sylvester Park, Centennial Park, the Old Capitol Building, and Capitol Lake. [2011 1st sp.s. c 43 § 203; 2005 c 16 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.123 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.19.125 Capitol buildings and grounds—Custody and control. (1) The director of enterprise services shall have custody and control of the capitol buildings and grounds, supervise and direct proper care, heating, lighting and repairing thereof, and designate rooms in the capitol buildings to be occupied by various state officials.

(2) During the 2007-2009 biennium, responsibility for development of the "Wheeler block" on the capitol campus as authorized in section 6013, chapter 520, Laws of 2007 shall be transferred from the department of general administration to the department of information services. [2011 1st sp.s. c 43 § 204; 2007 c 520 § 6014; 1965 c 8 § 43.19.125. Prior: 1959 c 301 § 2; 1955 c 285 § 9.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Part headings not law—2007 c 520: "Part headings in this act are not any part of the law." [2007 c 520 § 6055.]

Severability—2007 c 520: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 520 § 6056.]

Effective dates—2007 c 520: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [May 15, 2007], except for section 6035 of this act which takes effect July 1, 2007, and section 6037 of this act which takes effect June 30, 2011." [2007 c 520 § 6057.]

Capitol campus design advisory committee: RCW 43.34.080.

East capitol site, acquisition and development: RCW 79.24.500 through 79.24.600.

Housing for state offices: Chapter 43.82 RCW.

Parking facilities and traffic on capitol grounds: RCW 79.24.300 through 79.24.320, 46.08.150.

Public buildings, earthquake standards for construction: Chapter 70.86 RCW.

43.19.180 State purchasing and material control—Director's responsibility. The director of enterprise services shall ensure that overall state purchasing and material control policy is implemented by state agencies, including educational institutions, within established time limits. [2011 1st sp.s. c 43 § 205; 2009 c 549 § 5063; 1975-'76 2nd ex.s. c 21 § 1; 1965 c 8 § 43.19.180. Prior: 1955 c 285 § 10; 1935 c 176 § 16; RRS § 10786-15; prior: 1921 c 7 § 31; RRS § 10789.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.19.185 State purchasing and material control—System for the use of credit cards or similar devices to be developed—Rules. (1) The director shall develop a system for state agencies and departments to use credit cards or similar devices to make purchases. The director may contract to administer the credit cards.

(2) The director shall adopt rules for:

(a) The distribution of the credit cards;

(b) The authorization and control of the use of the credit cards;

(c) The credit limits available on the credit cards;

(d) Instructing users of gasoline credit cards to use self-service islands whenever possible;

(e) Payments of the bills; and

(f) Any other rule necessary to implement or administer the program under this section. [2011 1st sp.s. c 43 § 206; 1987 c 47 § 1; 1982 1st ex.s. c 45 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.190 State purchasing and material control—Director's powers and duties—Rules (as amended by 2011 1st sp.s. c 43). The director ((of general administration, through the state purchasing and material control director,) shall:

(1) ((Establish and staff such administrative organizational units within the division of purchasing as may be necessary for effective administration of the provisions of RCW 43.19.190 through 43.19.1939)) Develop rules and standards governing the acquisition and disposition of goods and services;

(2) ((Purchase all material, supplies, services, and equipment needed for the support, maintenance, and use of all state institutions, colleges, community colleges, technical colleges, college districts, and universities, the offices of the elective state officers, the supreme court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state)) Enter into contracts on behalf of the state to carry out the following: To purchase, lease, rent or otherwise acquire, dispose of, and maintain assets, licenses, purchased goods and services, client services, and personal services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent or otherwise acquire, dispose of, and maintain

~~assets, licenses, purchased goods and services, client services, and personal services. Agencies and institutions of state government are expressly prohibited from acquiring or disposing of such assets, licenses, purchased services, and personal services without such delegation of authority:~~ PROVIDED, That the provisions of RCW 43.19.190 through 43.19.1937 do not apply in any manner to the operation of the state legislature except as requested by the legislature: PROVIDED, That any agency may purchase material, supplies, services, and equipment for which the agency has notified the purchasing and material control director that it is more cost-effective for the agency to make the purchase directly from the vendor: PROVIDED, That primary authority for the purchase of specialized equipment, instructional, and research material for their own use shall rest with the colleges, community colleges, and universities: PROVIDED FURTHER, That universities operating hospitals and the ~~((state purchasing and material control))~~ director, as the agent for state hospitals as defined in RCW 72.23.010, and for health care programs provided in state correctional institutions as defined in RCW 72.65.010(3) and veterans' institutions as defined in RCW 72.36.010 and 72.36.070, may make purchases for hospital operation by participating in contracts for materials, supplies, and equipment entered into by nonprofit cooperative hospital group purchasing organizations: PROVIDED FURTHER, That primary authority for the purchase of materials, supplies, and equipment for resale to other than public agencies shall rest with the state agency concerned: PROVIDED FURTHER, That authority to purchase services as included herein does not apply to personal services as defined in chapter 39.29 RCW, unless such organization specifically requests assistance from the ~~((division of purchasing))~~ department of enterprise services in obtaining personal services and resources are available within the ~~((division))~~ department to provide such assistance: ~~((PROVIDED FURTHER, That the authority for the purchase of insurance and bonds shall rest with the risk manager under RCW 43.19.1935.))~~ PROVIDED FURTHER, That, except for the authority of the risk manager to purchase insurance and bonds, the director is not required to provide purchasing services for institutions of higher education that choose to exercise independent purchasing authority under RCW 28B.10.029: PROVIDED FURTHER, That the authority to purchase interpreter services and interpreter brokerage services on behalf of limited-English speaking or sensory-impaired applicants and recipients of public assistance shall rest with the department of social and health services in consultation with the department:

(3) Have authority to delegate to state agencies authorization to purchase or sell, which authorization shall specify restrictions as to dollar amount or to specific types of material, equipment, services, and supplies. Acceptance of the purchasing authorization by a state agency does not relieve such agency from conformance with other sections of RCW 43.19.190 through 43.19.1939, or from policies established by the director. Also, delegation of such authorization to a state agency, including an educational institution to which this section applies, to purchase or sell material, equipment, services, and supplies shall not be granted, or otherwise continued under a previous authorization, if such agency is not in substantial compliance with overall state purchasing and material control policies as established herein;

(4) Contract for the testing of material, supplies, and equipment with public and private agencies as necessary and advisable to protect the interests of the state;

(5) ~~((Prescribe the manner of inspecting all deliveries of supplies, materials, and equipment purchased through the division))~~ Develop state-wide or interagency procurement policies, standards, and procedures;

(6) ~~((Prescribe the manner in which supplies, materials, and equipment purchased through the division shall be delivered, stored, and distributed))~~ Provide direction concerning strategic planning goals and objectives related to state purchasing and contracts activities. The director shall seek input from the legislature and the judiciary;

(7) ~~((Provide for the maintenance of a catalogue library, manufacturers' and wholesalers' lists, and current market information))~~ Develop and implement a process for the resolution of appeals by:

(a) Vendors concerning the conduct of an acquisition process by an agency or the department; or

(b) A customer agency concerning the provision of services by the department or by other state providers;

(8) Establish policies for the periodic review by the department of agency performance which may include but are not limited to analysis of:

(a) Planning, management, purchasing control, and use of purchased services and personal services;

(b) Training and education; and

(c) Project management;

~~((8))~~ (9) Provide for a commodity classification system and may, in addition, provide for the adoption of standard specifications;

~~((9) Provide for the maintenance of inventory records of supplies, materials, and other property;))~~

(10) Prepare rules and regulations governing the relationship and procedures between the ~~((division of purchasing))~~ department and state agencies and vendors;

(11) Publish procedures and guidelines for compliance by all state agencies, including those educational institutions to which this section applies, which implement overall state purchasing and material control policies;

(12) Advise state agencies, including educational institutions, regarding compliance with established purchasing and material control policies under existing statutes. [2011 1st sp.s. c 43 § 207; 2002 c 200 § 3; 1995 c 269 § 1401; 1994 c 138 § 1; 1993 sp.s. c 10 § 2; 1993 c 379 § 102; 1991 c 238 § 135. Prior: 1987 c 414 § 10; 1987 c 70 § 1; 1980 c 103 § 1; 1979 c 88 § 1; 1977 ex.s. c 270 § 4; 1975-'76 2nd ex.s. c 21 § 2; 1971 c 81 § 110; 1969 c 32 § 3; prior: 1967 ex.s. c 104 § 2; 1967 ex.s. c 8 § 51; 1965 c 8 § 43.19.190; prior: 1959 c 178 § 1; 1957 c 187 § 1; 1955 c 285 § 12; prior: (i) 1935 c 176 § 21; RRS § 10786-20. (ii) 1921 c 7 § 42; RRS § 10800. (iii) 1955 c 285 § 12; 1921 c 7 § 37, part; RRS § 10795, part.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.190 State purchasing and material control director—Powers and duties (as amended by 2011 1st sp.s. c 43). The director of general administration, through the state purchasing and material control director, shall:

(1) Establish and staff such administrative organizational units within the division of purchasing as may be necessary for effective administration of the provisions of RCW 43.19.190 through 43.19.1939;

(2) Purchase all material, supplies, services, and equipment needed for the support, maintenance, and use of all state institutions, colleges, community colleges, technical colleges, college districts, and universities, the offices of the elective state officers, the supreme court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state: PROVIDED, That the provisions of RCW 43.19.190 through 43.19.1937 do not apply in any manner to the operation of the state legislature except as requested by the legislature: ~~PROVIDED, That the provisions of this section and RCW 43.19.1901 through *43.19.1925 do not apply to the acquisition and disposition of equipment, proprietary software, and information technology purchased services by the consolidated technology services agency created in RCW 43.105.047:~~ PROVIDED, That any agency may purchase material, supplies, services, and equipment for which the agency has notified the purchasing and material control director that it is more cost-effective for the agency to make the purchase directly from the vendor: PROVIDED, That primary authority for the purchase of specialized equipment, instructional, and research material for their own use shall rest with the colleges, community colleges, and universities: PROVIDED FURTHER, That universities operating hospitals and the state purchasing and material control director, as the agent for state hospitals as defined in RCW 72.23.010, and for health care programs provided in state correctional institutions as defined in RCW 72.65.010(3) and veterans' institutions as defined in RCW 72.36.010 and 72.36.070, may make purchases for hospital operation by participating in contracts for materials, supplies, and equipment entered into by nonprofit cooperative hospital group purchasing organizations: PROVIDED FURTHER, That primary authority for the purchase of materials, supplies, and equipment for resale to other than public agencies shall rest with the state agency concerned: PROVIDED FURTHER, That authority to purchase services as included herein does not apply to personal services as defined in chapter 39.29 RCW, unless such organization specifically requests assistance from the division of purchasing in obtaining personal services and resources are available within the division to provide such assistance: PROVIDED FURTHER, That the authority for the purchase of insurance and bonds shall rest with the risk manager under RCW ~~((43.19.1935))~~ 43.19.769: PROVIDED FURTHER, That, except for the authority of the risk manager to purchase insurance and bonds, the director is not required to provide purchasing services for institutions of higher education that choose to exercise independent purchasing authority under RCW 28B.10.029: PROVIDED FURTHER, That the authority to purchase interpreter services and interpreter brokerage services on behalf of limited-English speaking or sensory-impaired applicants and recipients of public assistance shall rest with the department of social and health services;

(3) Have authority to delegate to state agencies authorization to purchase or sell, which authorization shall specify restrictions as to dollar amount or to specific types of material, equipment, services, and supplies. Acceptance of the purchasing authorization by a state agency does not

relieve such agency from conformance with other sections of RCW 43.19.190 through 43.19.1939, or from policies established by the director. Also, delegation of such authorization to a state agency, including an educational institution to which this section applies, to purchase or sell material, equipment, services, and supplies shall not be granted, or otherwise continued under a previous authorization, if such agency is not in substantial compliance with overall state purchasing and material control policies as established herein;

(4) Contract for the testing of material, supplies, and equipment with public and private agencies as necessary and advisable to protect the interests of the state;

(5) Prescribe the manner of inspecting all deliveries of supplies, materials, and equipment purchased through the division;

(6) Prescribe the manner in which supplies, materials, and equipment purchased through the division shall be delivered, stored, and distributed;

(7) Provide for the maintenance of a catalogue library, manufacturers' and wholesalers' lists, and current market information;

(8) Provide for a commodity classification system and may, in addition, provide for the adoption of standard specifications;

(9) Provide for the maintenance of inventory records of supplies, materials, and other property;

(10) Prepare rules and regulations governing the relationship and procedures between the division of purchasing and state agencies and vendors;

(11) Publish procedures and guidelines for compliance by all state agencies, including those educational institutions to which this section applies, which implement overall state purchasing and material control policies;

(12) Advise state agencies, including educational institutions, regarding compliance with established purchasing and material control policies under existing statutes. [2011 1st sp.s. c 43 § 805; 2002 c 200 § 3; 1995 c 269 § 1401; 1994 c 138 § 1; 1993 sp.s. c 10 § 2; 1993 c 379 § 102; 1991 c 238 § 135. Prior: 1987 c 414 § 10; 1987 c 70 § 1; 1980 c 103 § 1; 1979 c 88 § 1; 1977 ex.s. c 270 § 4; 1975-'76 2nd ex.s. c 21 § 2; 1971 c 81 § 110; 1969 c 32 § 3; prior: 1967 ex.s. c 104 § 2; 1967 ex.s. c 8 § 51; 1965 c 8 § 43.19.190; prior: 1959 c 178 § 1; 1957 c 187 § 1; 1955 c 285 § 12; prior: (i) 1935 c 176 § 21; RRS § 10786-20. (ii) 1921 c 7 § 42; RRS § 10800. (iii) 1955 c 285 § 12; 1921 c 7 § 37, part; RRS § 10795, part.]

Reviser's note: *(1) RCW 43.19.1923 and 43.19.1925 were repealed by 2011 1st sp.s. c 43 § 258, effective October 1, 2011.

(2) RCW 43.19.190 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—2002 c 200: See note following RCW 39.29.040.

Purpose—1993 sp.s. c 10: "The legislature recognizes the need for state agencies to maximize the buying power of increasingly scarce resources for the purchase of goods and services. The legislature seeks to provide state agencies with the ability to purchase goods and services at the lowest cost." [1993 sp.s. c 10 § 1.]

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Federal surplus property: Chapter 39.32 RCW.

Purchase of blind made products and services: Chapter 19.06 RCW.

Additional notes found at www.leg.wa.gov

43.19.1905 Statewide policy for purchasing and material control—Definitions. (1) The director of enterprise services shall establish overall state policy for compliance by all state agencies, including educational institutions, regarding the following purchasing and material control functions:

(a) Development of a state commodity coding system;

(b) A standard notification form for state agencies to report cost-effective direct purchases, which shall at least identify the price of the goods as available through the department, the price of the goods as available from the alternative source, the total savings, and the signature of the notifying agency's director or the director's designee;

(c) Screening of supplies, material, and equipment excess to the requirements of one agency for overall state need before sale as surplus;

(d) Determining when centralized rather than decentralized purchasing shall be used to obtain maximum benefit of volume buying of identical or similar items, including procurement from federal supply sources;

(e) Development of criteria for use of leased, rather than state owned, warehouse space based on relative cost and accessibility;

(f) Determination of how transportation costs incurred by the state for materials, supplies, services, and equipment can be reduced by improved freight and traffic coordination and control;

(g) Establishment of a formal certification program for state employees who are authorized to perform purchasing functions as agents for the state under the provisions of chapter 43.19 RCW;

(h) Development of performance measures for the reduction of total overall expense for material, supplies, equipment, and services used each biennium by the state;

(i) Establishment of a standard system for all state organizations to record and report dollar savings and cost avoidance which are attributable to the establishment and implementation of improved purchasing and material control procedures;

(j) Development of procedures for mutual and voluntary cooperation between state agencies, including educational institutions, and political subdivisions for exchange of purchasing and material control services;

(k) Resolution of all other purchasing and material matters which require the establishment of overall statewide policy for effective and economical supply management;

(l) Development of guidelines and criteria for the purchase of vehicles, high gas mileage vehicles, alternate vehicle fuels and systems, equipment, and materials that reduce overall energy-related costs and energy use by the state, including investigations into all opportunities to aggregate the purchasing of clean technologies by state and local governments, and including the requirement that new passenger vehicles purchased by the state meet the minimum standards for passenger automobile fuel economy established by the United States secretary of transportation pursuant to the energy policy and conservation act (15 U.S.C. Sec. 2002);

(m) Development of goals for state use of recycled or environmentally preferable products through specifications for products and services, processes for requests for proposals and requests for qualifications, contractor selection, and contract negotiations;

(n) Development of procurement policies and procedures, such as unbundled contracting and subcontracting, that encourage and facilitate the purchase of products and services by state agencies and institutions from Washington small businesses to the maximum extent practicable and consistent with international trade agreement commitments;

(o) Development of food procurement procedures and materials that encourage and facilitate the purchase of Washington grown food by state agencies and institutions to the maximum extent practicable and consistent with international trade agreement commitments; and

(p) Development of policies requiring all food contracts to include a plan to maximize to the extent practicable and consistent with international trade agreement commitments the availability of Washington grown food purchased through the contract.

(2) The definitions in this subsection apply throughout this section and RCW 43.19.1908.

(a) "Common vendor registration and bid notification system" has the definition in RCW 39.29.006.

(b) "Small business" has the definition in RCW 39.29.006.

(c) "Washington grown" has the definition in RCW 15.64.060. [2011 1st sp.s. c 43 § 208; 2009 c 486 § 10; 2008 c 215 § 4. Prior: 2002 c 299 § 5; 2002 c 285 § 1; 1995 c 269 § 1402; 1993 sp.s. c 10 § 3; 1987 c 504 § 16; 1980 c 172 § 7; 1975-'76 2nd ex.s. c 21 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—2009 c 486: See note following RCW 39.29.006.

Conflict with federal requirements—2009 c 486: See note following RCW 28B.30.530.

Findings—Intent—Short title—Captions not law—Conflict with federal requirements—2008 c 215: See notes following RCW 15.64.060.

Purpose—1993 sp.s. c 10: See note following RCW 43.19.190.

Energy conservation—Legislative finding—Declaration—Purpose: RCW 43.19.668 and 43.19.669.

Additional notes found at www.leg.wa.gov

43.19.19052 Initial purchasing and material control policy—Legislative intent—Agency cooperation. Initial policy determinations for the functions described in RCW 43.19.1905 shall be developed and published within the 1975-77 biennium by the director for guidance and compliance by all state agencies, including educational institutions, involved in purchasing and material control. Modifications to these initial supply management policies established during the 1975-77 biennium shall be instituted by the director in future biennia as required to maintain an efficient and up-to-date state supply management system.

It is the intention of the legislature that measurable improvements in the effectiveness and economy of supply management in state government shall be achieved during the 1975-77 biennium, and each biennium thereafter. All agencies, departments, offices, divisions, boards, and commissions and educational, correctional, and other types of institutions are required to cooperate with and support the development and implementation of improved efficiency and economy in purchasing and material control. To effectuate this legislative intention, the director has the authority to direct and require the submittal of data from all state organizations concerning purchasing and material control matters. [2011 1st sp.s. c 43 § 209; 1998 c 245 § 54; 1995 c 269 § 1403; 1986 c 158 § 9; 1979 c 151 § 98; 1975-'76 2nd ex.s. c 21 § 6.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.19.1906 Competitive bids—Procedure—Exceptions. Insofar as practicable, all purchases and sales shall be based on competitive bids, and a formal sealed, electronic, or

web-based bid procedure, subject to RCW 43.19.1911, shall be used as standard procedure for all purchases and contracts for purchases and sales executed by the director and under the powers granted by RCW 43.19.190 through 43.19.1939. This requirement also applies to purchases and contracts for purchases and sales executed by agencies, including educational institutions, under delegated authority granted in accordance with provisions of RCW 43.19.190 or under RCW 28B.10.029. However, formal sealed, electronic, or web-based competitive bidding is not necessary for:

(1) Emergency purchases made pursuant to RCW 43.19.200 if the sealed bidding procedure would prevent or hinder the emergency from being met appropriately;

(2) Direct buy purchases and informal competitive bidding, as designated by the director of enterprise services. The director of enterprise services shall establish policies annually to define criteria and dollar thresholds for direct buy purchases and informal competitive bidding limits. These criteria may be adjusted to accommodate special market conditions and to promote market diversity for the benefit of the citizens of the state of Washington;

(3) Purchases which are clearly and legitimately limited to a single source of supply and purchases involving special facilities, services, or market conditions, in which instances the purchase price may be best established by direct negotiation;

(4) Purchases of insurance and bonds by the risk management office under RCW 43.19.769;

(5) Purchases and contracts for vocational rehabilitation clients of the department of social and health services: PROVIDED, That this exemption is effective only when the director of enterprise services, after consultation with the director of the division of vocational rehabilitation and appropriate department of social and health services procurement personnel, declares that such purchases may be best executed through direct negotiation with one or more suppliers in order to expeditiously meet the special needs of the state's vocational rehabilitation clients;

(6) Purchases by universities for hospital operation or biomedical teaching or research purposes and by the director of enterprise services, as the agent for state hospitals as defined in RCW 72.23.010, and for health care programs provided in state correctional institutions as defined in RCW 72.65.010(3) and veterans' institutions as defined in RCW 72.36.010 and 72.36.070, made by participating in contracts for materials, supplies, and equipment entered into by non-profit cooperative hospital group purchasing organizations;

(7) Purchases for resale by institutions of higher education to other than public agencies when such purchases are for the express purpose of supporting instructional programs and may best be executed through direct negotiation with one or more suppliers in order to meet the special needs of the institution;

(8) Purchases by institutions of higher education under RCW 43.19.190(2), direct buy purchases, and informal competitive bidding, as designated by the director of enterprise services; and

(9) Off-contract purchases of Washington grown food when such food is not available from Washington sources through an existing contract. However, Washington grown food purchased under this subsection must be of an equiva-

lent or better quality than similar food available through the contract and be able to be paid from the agency's existing budget. This requirement also applies to purchases and contracts for purchases executed by state agencies, including institutions of higher education, under delegated authority granted in accordance with RCW 43.19.190 or under RCW 28B.10.029.

Beginning on July 1, 1995, and on July 1st of each succeeding odd-numbered year, the dollar limits specified in this section shall be adjusted as follows: The office of financial management shall calculate such limits by adjusting the previous biennium's limits by the appropriate federal inflationary index reflecting the rate of inflation for the previous biennium. Such amounts shall be rounded to the nearest one hundred dollars.

As used in this section, "Washington grown" has the definition in RCW 15.64.060. [2011 1st sp.s. c 43 § 210; 2008 c 215 § 5; 2006 c 363 § 1; 2002 c 332 § 4. Prior: 1999 sp.s. c 1 § 606; 1999 c 195 § 1; 1999 c 106 § 1; 1995 c 269 § 1404; 1994 c 300 § 1; 1993 c 379 § 103; 1992 c 85 § 1; prior: 1987 c 81 § 1; 1987 c 70 § 2; 1985 c 342 § 1; 1984 c 102 § 3; 1983 c 141 § 1; 1980 c 103 § 2; 1979 ex.s. c 14 § 1; 1977 ex.s. c 270 § 5; 1975-'76 2nd ex.s. c 21 § 8; 1965 c 8 § 43.19.1906; prior: 1959 c 178 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Intent—Short title—Captions not law—Conflict with federal requirements—2008 c 215: See notes following RCW 15.64.060.

Intent—Effective date—2002 c 332: See notes following RCW 43.19.760.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Findings—1984 c 102: See note following RCW 43.19.200.

Additional notes found at www.leg.wa.gov

43.19.1908 Bids—Solicitation—Qualified bidders. Competitive bidding required by RCW 43.19.190 through 43.19.1939 shall be solicited by public notice, by posting of the contract opportunity on the state's common vendor registration and bid notification system, and through the sending of notices by mail, electronic transmission, or other means to bidders on the appropriate list of bidders who shall have qualified by application to the department. Bids may be solicited by the department from any source thought to be of advantage to the state. All bids shall be in written or electronic form and conform to rules of the department. [2011 1st sp.s. c 43 § 211; 2009 c 486 § 11; 2006 c 363 § 2; 1994 c 300 § 2; 1965 c 8 § 43.19.1908. Prior: 1959 c 178 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—2009 c 486: See note following RCW 39.29.006.

Conflict with federal requirements—2009 c 486: See note following RCW 28B.30.530.

43.19.1913 Rejection of bid for previous unsatisfactory performance. The department may reject the bid of any bidder who has failed to perform satisfactorily a previous contract with the state. [2011 1st sp.s. c 43 § 212; 1965 c 8 § 43.19.1913. Prior: 1959 c 178 § 7.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.1915 Bidder's bond—Annual bid bond. When any bid has been accepted, the department may require of the successful bidder a bond payable to the state in such amount with such surety or sureties as determined by the department, conditioned that he or she will fully, faithfully and accurately execute the terms of the contract into which he or she has entered. The bond shall be filed in the department. Bidders who regularly do business with the state shall be permitted to file with the department an annual bid bond in an amount established by the department and such annual bid bond shall be acceptable as surety in lieu of furnishing surety with individual bids. [2011 1st sp.s. c 43 § 213; 2009 c 549 § 5064; 1965 c 8 § 43.19.1915. Prior: 1959 c 178 § 8.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.1917 Records of equipment owned by state—Inspection—"State equipment" defined. All state agencies, including educational institutions, shall maintain a perpetual record of ownership of state owned equipment, which shall be available for the inspection and check of those officers who are charged by law with the responsibility for auditing the records and accounts of the state organizations owning the equipment, or to such other special investigators and others as the governor may direct. In addition, these records shall be made available to members of the legislature, the legislative committees, and legislative staff on request.

All state agencies, including educational institutions, shall account to the office of financial management upon request for state equipment owned by, assigned to, or otherwise possessed by them and maintain such records as the office of financial management deems necessary for proper accountability therefor. The office of financial management shall publish a procedural directive for compliance by all state agencies, including educational institutions, which establishes a standard method of maintaining records for state owned equipment, including the use of standard state forms. This published directive also shall include instructions for reporting to the department all state equipment which is excess to the needs of state organizations owning such equipment. The term "state equipment" means all items of machines, tools, furniture, or furnishings other than expendable supplies and materials as defined by the office of financial management. [2011 1st sp.s. c 43 § 214; 1979 c 88 § 3; 1975-'76 2nd ex.s. c 21 § 9; 1969 ex.s. c 53 § 2; 1965 c 8 § 43.19.1917. Prior: 1959 c 178 § 9.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.19.1919 Surplus personal property—Sale, exchange—Exceptions and limitations. The department shall sell or exchange personal property belonging to the state for which the agency, office, department, or educational institution having custody thereof has no further use, at public or private sale, and cause the moneys realized from the sale of any such property to be paid into the fund from which such property was purchased or, if such fund no longer exists, into the state general fund. This requirement is subject to the following exceptions and limitations:

(1) This section does not apply to property under RCW 27.53.045, 28A.335.180, or 43.19.1920;

(2) Sales of capital assets may be made by the department and a credit established for future purchases of capital items as provided for in RCW 43.19.190 through 43.19.1939;

(3) Personal property, excess to a state agency, including educational institutions, shall not be sold or disposed of prior to reasonable efforts by the department to determine if other state agencies have a requirement for such personal property. Such determination shall follow sufficient notice to all state agencies to allow adequate time for them to make their needs known. Surplus items may be disposed of without prior notification to state agencies if it is determined by the director to be in the best interest of the state. The department shall maintain a record of disposed surplus property, including date and method of disposal, identity of any recipient, and approximate value of the property;

(4) This section does not apply to personal property acquired by a state organization under federal grants and contracts if in conflict with special title provisions contained in such grants or contracts;

(5) A state agency having a surplus personal property asset with a fair market value of less than five hundred dollars may transfer the asset to another state agency without charging fair market value. A state agency conducting this action must maintain adequate records to comply with agency inventory procedures and state audit requirements. [2011 1st sp.s. c 43 § 215; 2000 c 183 § 1; 1997 c 264 § 2; (1995 2nd sp.s. c 14 § 513 expired June 30, 1997); 1991 c 216 § 2; 1989 c 144 § 1; 1988 c 124 § 8; 1975-'76 2nd ex.s. c 21 § 11; 1965 c 8 § 43.19.1919. Prior: 1959 c 178 § 10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—1991 c 216: "The legislature finds that (1) there are an increasing number of persons who are unable to meet their basic needs relating to shelter, clothing, and nourishment; (2) there are many nonprofit organizations and units of local government that provide shelter and other assistance to these persons but that these organizations are finding it difficult to meet the increasing demand for such assistance; and (3) the numerous agencies and institutions of state government generate a significant quantity of surplus, tangible personal property that would be of great assistance to homeless persons throughout the state. Therefore, the legislature finds that it is in the best interest of the state to provide for the donation of state-owned, surplus, tangible property to assist the homeless in meeting their basic needs." [1991 c 216 § 1.]

Severability—Intent—Application—1988 c 124: See RCW 27.53.901 and notes following RCW 27.53.030.

Additional notes found at www.leg.wa.gov

43.19.19191 Surplus computers and computer-related equipment—Donation to school districts or educational service districts. (1) In addition to disposing of property under RCW 28A.335.180, 39.33.010, 43.19.1919, and 43.19.1920, state-owned, surplus computers and computer-related equipment may be donated to any school district or educational service district under the guidelines and distribution standards established pursuant to subsection (2) of this section.

(2) The department and office of the superintendent of public instruction shall jointly develop guidelines and distribution standards for the donation of state-owned, surplus computers and computer-related equipment to school districts and educational service districts. The guidelines and

distribution standards shall include considerations for quality, school-district needs, and accountability, and shall give priority to meeting the computer-related needs of children with disabilities, including those disabilities necessitating the portability of laptop computers. The guidelines must be updated as needed. [2011 1st sp.s. c 43 § 216; 1999 c 186 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.1920 Surplus personal property—Donation to emergency shelters. The department may donate state-owned, surplus, tangible personal property to shelters that are: Participants in the department of commerce's emergency shelter assistance program; and operated by nonprofit organizations or units of local government providing emergency or transitional housing for homeless persons. A donation may be made only if all of the following conditions have been met:

(1) The department has made reasonable efforts to determine if any state agency has a requirement for such personal property and no such agency has been identified. Such determination shall follow sufficient notice to all state agencies to allow adequate time for them to make their needs known;

(2) The agency owning the property has authorized the department to donate the property in accordance with this section;

(3) The nature and quantity of the property in question is directly germane to the needs of the homeless persons served by the shelter and the purpose for which the shelter exists and the shelter agrees to use the property for such needs and purposes; and

(4) The director has determined that the donation of such property is in the best interest of the state. [2011 1st sp.s. c 43 § 217; 1995 c 399 § 63; 1991 c 216 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—1991 c 216: See note following RCW 43.19.1919.

Emergency shelter assistance program: Chapter 365-120 WAC.

43.19.19201 Affordable housing—Inventory of suitable property. (1) The department shall identify and catalog real property that is no longer required for department purposes and is suitable for the development of affordable housing for very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510. The inventory shall include the location, approximate size, and current zoning classification of the property. The department shall provide a copy of the inventory to the department of commerce by November 1, 1993, and every November 1 thereafter.

(2) By November 1 of each year, beginning in 1994, the department shall purge the inventory of real property of sites that are no longer available for the development of affordable housing. The department shall include an updated listing of real property that has become available since the last update. As used in this section, "real property" means buildings, land, or buildings and land. [2011 1st sp.s. c 43 § 218; 1995 c 399 § 64; 1993 c 461 § 7.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Finding—1993 c 461: See note following RCW 43.63A.510.

43.19.1921 Warehouse facilities—Central salvage—Sales, exchanges, between state agencies. The director shall:

(1) Establish and maintain warehouses for the centralized storage and distribution of such supplies, equipment, and other items of common use in order to effect economies in the purchase of supplies and equipment for state agencies. To provide warehouse facilities the department may, by arrangement with the state agencies, utilize any surplus available state-owned space, and may acquire other needed warehouse facilities by lease or purchase of the necessary premises;

(2) Provide for the central salvage of equipment, furniture, or furnishings used by state agencies, and also by means of such a service provide an equipment pool for effecting sales and exchanges of surplus and unused property by and between state agencies. [2011 1st sp.s. c 43 § 219; 1979 c 151 § 100; 1965 c 8 § 43.19.1921. Prior: 1959 c 178 § 11.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.1923 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.19.1925 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.19.1932 Correctional industries goods and services—Sales and purchases. The department of corrections shall be exempt from the following provisions of this chapter in respect to goods or services purchased or sold pursuant to the operation of correctional industries: RCW 43.19.180, 43.19.190, 43.19.1901, 43.19.1905, 43.19.1906, 43.19.1908, 43.19.1911, 43.19.1913, 43.19.1915, 43.19.1917, 43.19.1919, 43.19.1921, and 43.19.200. [2011 1st sp.s. c 43 § 220; 1989 c 185 § 2; 1981 c 136 § 14.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.19.200 Duty of others in relation to purchases—Emergency purchases—Written notifications. (1) The governing authorities of the state's educational institutions, the elective state officers, the supreme court, the court of appeals, the administrative and other departments of the state government, and all appointive officers of the state, shall prepare estimates of the supplies required for the proper conduct and maintenance of their respective institutions, offices, and departments, covering periods to be fixed by the director, and forward them to the director in accordance with his or her directions. No such authorities, officers, or departments, or any officer or employee thereof, may purchase any article for the use of their institutions, offices, or departments, except in case of emergency purchases as provided in subsection (2) of this section.

(2) The authorities, officers, and departments enumerated in subsection (1) of this section may make emergency purchases in response to unforeseen circumstances beyond the control of the agency which present a real, immediate, and extreme threat to the proper performance of essential functions or which may reasonably be expected to result in excessive loss or damage to property, bodily injury, or loss of

life. When an emergency purchase is made, the agency head shall submit written notification of the purchase, within three days of the purchase, to the director. This notification shall contain a description of the purchase, description of the emergency and the circumstances leading up to the emergency, and an explanation of why the circumstances required an emergency purchase.

(3) Purchases made for the state's educational institutions, the offices of the elective state officers, the supreme court, the court of appeals, the administrative and other departments of the state government, and the offices of all appointive officers of the state, shall be paid for out of the moneys appropriated for supplies, material, and service of the respective institutions, offices, and departments.

(4) The director shall submit, on an annual basis, the written notifications required by subsection (2) of this section to the director of financial management. [2011 1st sp.s. c 43 § 221; 2009 c 549 § 5066; 1986 c 158 § 10; 1984 c 102 § 2; 1971 c 81 § 111; 1965 c 8 § 43.19.200. Prior: 1955 c 285 § 13; prior: 1921 c 7 § 37, part; RRS § 10795, part.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—1984 c 102: "The legislature finds that the emergency purchasing provisions of state law are being more liberally construed than the legislature originally intended. Therefore, the legislature finds that it is necessary to clarify the law as it pertains to emergency purchases and to provide a mechanism for legislative oversight." [1984 c 102 § 1.]

43.19.450 Supervisor of engineering and architecture—Qualifications—Appointment—Powers and duties—Delegation of authority—"State facilities" defined. The director shall appoint a supervisor of engineering and architecture.

A person is not eligible for appointment as supervisor of engineering and architecture unless he or she is licensed to practice the profession of engineering or the profession of architecture in the state of Washington and for the last five years prior to his or her appointment has been licensed to practice the profession of engineering or the profession of architecture.

As used in this section, "state facilities" includes all state buildings, related structures, and appurtenances constructed for any elected state officials, institutions, departments, boards, commissions, colleges, community colleges, except the state universities, The Evergreen State College and regional universities. "State facilities" does not include facilities owned by or used for operational purposes and constructed for the department of transportation, department of fish and wildlife, department of natural resources, or state parks and recreation commission.

The director or the director's designee shall:

(1) Prepare cost estimates and technical information to accompany the capital budget and prepare or contract for plans and specifications for new construction and major repairs and alterations to state facilities.

(2) Contract for professional architectural, engineering, and related services for the design of new state facilities and major repair or alterations to existing state facilities.

(3) Provide contract administration for new construction and the repair and alteration of existing state facilities.

(4) In accordance with the public works laws, contract on behalf of the state for the new construction and major repair or alteration of state facilities.

The director may delegate any and all of the functions under subsections (1) through (4) of this section to any agency upon such terms and conditions as considered advisable. [2011 1st sp.s. c 43 § 222; 1994 c 264 § 15; 1988 c 36 § 14; 1982 c 98 § 3; 1981 c 136 § 63; 1979 c 141 § 45; 1965 c 8 § 43.19.450. Prior: 1959 c 301 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.19.455 Purchase of works of art—Procedure.

Except as provided under RCW 43.17.210, the Washington state arts commission shall determine the amount to be made available for the purchase of art under RCW 43.17.200 in consultation with the director, and payments therefor shall be made in accordance with law. The designation of projects and sites, selection, contracting, purchase, commissioning, reviewing of design, execution and placement, acceptance, maintenance, and sale, exchange, or disposition of works of art shall be the responsibility of the Washington state arts commission in consultation with the director. [2011 1st sp.s. c 43 § 223; 2005 c 36 § 6; 1990 c 33 § 576; 1983 c 204 § 6; 1974 ex.s. c 176 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Acquisition of works of art for public buildings and lands—Visual arts program established: RCW 43.46.090.

Allocation of moneys for acquisition of works of art—Expenditure by arts commission—Conditions: RCW 43.17.200.

State art collection: RCW 43.46.095.

Additional notes found at www.leg.wa.gov

43.19.500 Enterprise services account—Use. The enterprise services account shall be used by the department for the payment of certain costs, expenses, and charges, as specified in this section, incurred by it in the operation and administration of the department in the rendering of services, the furnishing or supplying of equipment, supplies and materials, and for providing or allocating facilities, including the operation, maintenance, rehabilitation, or furnishings thereof to other agencies, offices, departments, activities, and other entities enumerated in RCW 43.01.090 and including the rendering of services in acquiring real estate under RCW 43.82.010 and the operation and maintenance of public and historic facilities at the state capitol, as defined in RCW 79.24.710. The department shall treat the rendering of services in acquiring real estate and the operation and maintenance of state capitol public and historic facilities as separate operating entities within the account for financial accounting and control.

The schedule of services, facilities, equipment, supplies, materials, maintenance, rehabilitation, furnishings, operations, and administration to be so financed and recovered shall be determined jointly by the director and the director of financial management, in equitable amounts which, together with any other income or appropriation, will provide the

department with funds to meet its anticipated expenditures during any allotment period.

The director may adopt rules governing the provisions of RCW 43.01.090 and this section and the relationships and procedures between the department and such other entities. [2011 1st sp.s. c 43 § 224; 2005 c 330 § 6; 1998 c 105 § 9; 1994 c 219 § 17; 1982 c 41 § 2; 1979 c 151 § 101; 1971 ex.s. c 159 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Purpose—1994 c 219: See note following RCW 43.01.090.

Finding—1994 c 219: See note following RCW 43.88.030.

Agricultural commodity commissions exempt: RCW 15.04.200.

General administration services account—Approval of certain changes required: RCW 43.88.350.

Additional notes found at www.leg.wa.gov

43.19.501 Thurston county capital facilities account.

The Thurston county capital facilities account is created in the state treasury. The account is subject to the appropriation and allotment procedures under chapter 43.88 RCW. Moneys in the account may be expended for capital projects in facilities owned and managed by the department in Thurston county. For the 2007-2009 biennium, moneys in the account may be used for predesign identified in section 1037, chapter 328, Laws of 2008.

During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may transfer from the Thurston county capital facilities account to the state general fund such amounts as reflect the excess fund balance of the account. [2011 1st sp.s. c 50 § 943; 2011 1st sp.s. c 43 § 225; 2009 c 564 § 932; 2008 c 328 § 6016; 1994 c 219 § 18.]

Reviser's note: This section was amended by 2011 1st sp.s. c 43 § 225 and by 2011 1st sp.s. c 50 § 943, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2009 c 564: See note following RCW 2.68.020.

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Findings—Purpose—1994 c 219: See note following RCW 43.01.090.

Finding—1994 c 219: See note following RCW 43.88.030.

43.19.530 Purchases from entities serving or providing opportunities through community rehabilitation programs—Authorized—Fair market price. The state agencies and departments are hereby authorized to purchase products and/or services manufactured or provided by community rehabilitation programs of the department of social and health services.

Such purchases shall be at the fair market price of such products and services as determined by the department of enterprise services. To determine the fair market price the department shall use the last comparable bid on the products and/or services or in the alternative the last price paid for the products and/or services. The increased cost of labor, materials, and other documented costs since the last comparable

bid or the last price paid are additional cost factors which shall be considered in determining fair market price. Upon the establishment of the fair market price as provided for in this section the department is hereby empowered to negotiate directly for the purchase of products or services with officials in charge of the community rehabilitation programs of the department of social and health services. [2011 1st sp.s. c 43 § 226; 2005 c 204 § 2; 2003 c 136 § 3; 1977 ex.s. c 10 § 2; 1974 ex.s. c 40 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.534 Purchase of articles or products from inmate work programs—Replacement of goods and services obtained from outside the state—Rules. (1) State agencies, the legislature, and departments shall purchase for their use all goods and services required by the legislature, agencies, or departments that are produced or provided in whole or in part from class II inmate work programs operated by the department of corrections through state contract. These goods and services shall not be purchased from any other source unless, upon application by the department or agency: (a) The department finds that the articles or products do not meet the reasonable requirements of the agency or department, (b) are not of equal or better quality, or (c) the price of the product or service is higher than that produced by the private sector. However, the criteria contained in (a), (b), and (c) of this subsection for purchasing goods and services from sources other than correctional industries do not apply to goods and services produced by correctional industries that primarily replace goods manufactured or services obtained from outside the state. The department of corrections and department shall adopt administrative rules that implement this section.

(2) During the 2009-2011 and 2011-2013 fiscal biennia, and in conformance with section 223(11), chapter 470, Laws of 2009 and section 221(2), chapter 367, Laws of 2011, this section does not apply to the purchase of uniforms by the Washington state ferries. [2011 1st sp.s. c 43 § 227; 2011 c 367 § 707; 2009 c 470 § 717; 1993 sp.s. c 20 § 1; 1986 c 94 § 2.]

Reviser's note: This section was amended by 2011 c 367 § 707 and by 2011 1st sp.s. c 43 § 227, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 c 367: See note following RCW 47.29.170.

Effective date—2009 c 470: See note following RCW 46.68.170.

Additional notes found at www.leg.wa.gov

43.19.538 Purchase of products containing recycled material—Preference—Specifications and rules—Review. (1) The director shall develop specifications and adopt rules for the purchase of products which will provide for preferential purchase of products containing recycled material by:

(a) The use of a weighting factor determined by the amount of recycled material in a product, where appropriate and known in advance to potential bidders, to determine the lowest responsible bidder. The actual dollars bid shall be the

contracted amount. If the department determines, according to criteria established by rule that the use of this weighting factor does not encourage the use of more recycled material, the department shall consider and award bids without regard to the weighting factor. In making this determination, the department shall consider but not be limited to such factors as adequate competition, economics or environmental constraints, quality, and availability.

(b) Requiring a written statement of the percentage range of recycled content from the bidder providing products containing recycled [material]. The range may be stated in five percent increments.

(2) The director shall develop a directory of businesses that supply products containing significant quantities of recycled materials. This directory may be combined with and made accessible through the database of recycled content products to be developed under RCW 43.19A.060.

(3) The director shall encourage all parties using the state purchasing office to purchase products containing recycled materials.

(4) The rules, specifications, and bid evaluation shall be consistent with recycled content standards adopted under RCW 43.19A.020. [2011 1st sp.s. c 43 § 228; 1991 c 297 § 5; 1988 c 175 § 2; 1987 c 505 § 26; 1982 c 61 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Recycled product procurement: Chapter 43.19A RCW.

State purchasing and material control—Director's responsibility: RCW 43.19.180.

Additional notes found at www.leg.wa.gov

43.19.539 Purchase of electronic products meeting environmental performance standards—Surplus electronic products—Use of registered transporters, processors—Legal secondary markets. (1) The department shall establish purchasing and procurement policies that establish a preference for electronic products that meet environmental performance standards relating to the reduction or elimination of hazardous materials.

(2) The department shall ensure that their surplus electronic products, other than those sold individually to private citizens, are managed only by registered transporters and by processors meeting the requirements of RCW 70.95N.250.

(3) The department shall ensure that their surplus electronic products are directed to legal secondary materials markets by requiring a chain of custody record that documents to whom the products were initially delivered through to the end use manufacturer. [2011 1st sp.s. c 43 § 229; 2006 c 183 § 36.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Construction—Severability—Effective date—2006 c 183: See RCW 70.95N.900 through 70.95N.902.

43.19.560 Motor vehicle transportation service—Definitions. As used in RCW 43.19.565 through 43.19.635, 43.41.130 and 43.41.140, the following definitions shall apply:

(1) "Passenger motor vehicle" means any sedan, station wagon, bus, or light truck which is designed for carrying ten

passengers or less and is used primarily for the transportation of persons;

(2) "State agency" shall include any state office, agency, commission, department, or institution financed in whole or in part from funds appropriated by the legislature. It shall also include the Washington state school director's association, but it shall not include (a) the state supreme court or any agency of the judicial branch or (b) the legislature or any of its statutory, standing, special, or interim committees, other than at the option of the judicial or legislative agency or committee concerned;

(3) "Employee commuting" shall mean travel by a state officer or employee to or from his or her official residence or other domicile to or from his or her official duty station or other place of work;

(4) "Motor vehicle transportation services" shall include but not be limited to the furnishing of motor vehicles for the transportation of persons or property, with or without drivers, and may also include furnishing of maintenance, storage, and other support services to state agencies for the conduct of official state business. [2011 1st sp.s. c 43 § 230; 1983 c 187 § 3; 1975 1st ex.s. c 167 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Power to appoint or employ personnel does not include power to provide state owned or leased vehicle: RCW 43.01.150.

Additional notes found at www.leg.wa.gov

43.19.565 Motor vehicle transportation service—Powers and duties—Agency exemptions. The department shall establish a motor vehicle transportation service which is hereby empowered to:

(1) Provide suitable motor vehicle transportation services to state agencies on either a temporary or permanent basis and upon such demonstration of need as the department may require;

(2) Provide motor pools for the use of state agencies located in the Olympia area and such additional motor pools at other locations in the state as may be necessary to provide economic, efficient, and effective motor vehicle transportation services to state agencies. Such additional motor pools may be under either the direct control of the department or under the supervision of another state agency by agreement with the department;

(3) Establish an equitable schedule of rental and mileage charges to agencies for motor vehicle transportation services furnished which shall be designed to provide funds to recover the actual total costs of motor pool operations including but not limited to vehicle operation expense, depreciation expense, overhead, and nonrecoverable collision or other damage to vehicles; and

(4) Establish guidelines, procedures, and standards for fleet operations that other state agencies and institutions of higher education may adopt. The guidelines, procedures, and standards shall be consistent with and carry out the objectives of any general policies adopted by the office of financial management under RCW 43.41.130.

Unless otherwise determined by the director after consultation with the office of financial management, vehicles owned and managed by the department of transportation, the department of natural resources, and the Washington state

patrol are exempt from the requirements of subsections (1), (2), and (4) of this section. [2011 1st sp.s. c 43 § 231; 2005 c 214 § 1; 1998 c 111 § 3; 1975 1st ex.s. c 167 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.19.585 Motor vehicle transportation service—Powers and duties. The director or the director's designee shall have general charge and supervision of state motor pools and motor vehicle transportation services under departmental administration and control.

The director or the director's designee shall (1) acquire by purchase or otherwise a sufficient number of motor vehicles to fulfill state agency needs for motor vehicle transportation service, (2) provide for necessary upkeep and repair, and (3) provide for servicing motor pool vehicles with fuel, lubricants, and other operating requirements. [2011 1st sp.s. c 43 § 232; 1975 1st ex.s. c 167 § 7.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.19.590 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.19.595 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.19.600 Motor vehicle transportation service—Transfer of passenger motor vehicles to department from other agencies—Studies—Agency exemptions. (1) Any passenger motor vehicles currently owned or hereafter acquired by any state agency shall be purchased by or transferred to the department. The director may accept vehicles subject to the provisions of RCW 43.19.560 through 43.19.630, 43.41.130 and 43.41.140 prior to July 1, 1975, if he or she deems it expedient to accomplish an orderly transition.

(2) The department, in cooperation with the office of financial management, shall study and ascertain current and prospective needs of state agencies for passenger motor vehicles and shall direct the transfer to a state motor pool or other appropriate disposition of any vehicle found not to be required by a state agency.

(3) The department shall direct the transfer of passenger motor vehicles from a state agency to a state motor pool or other disposition as appropriate, based on a study under subsection (2) of this section, if a finding is made based on data therein submitted that the economy, efficiency, or effectiveness of state government would be improved by such a transfer or other disposition of passenger motor vehicles. Any dispute over the accuracy of data submitted as to the benefits in state governmental economy, efficiency, and effectiveness to be gained by such transfer shall be resolved by the director and the director of financial management. Unless otherwise determined by the director after consultation with the office of financial management, vehicles owned and managed by the department of transportation, the department of natural resources, and the Washington state patrol are exempt from

the requirements of subsections (1) through (3) of this section. [2011 1st sp.s. c 43 § 233; 2009 c 549 § 5068; 1982 c 163 § 12; 1979 c 151 § 102; 1975 1st ex.s. c 167 § 10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.19.610 Enterprise services account—Sources—Disbursements. All moneys, funds, proceeds, and receipts as provided by law shall be paid into the enterprise services account. Disbursements therefrom shall be made in accordance with the provisions of RCW 43.19.560 through 43.19.630, 43.41.130 and 43.41.140 as authorized by the director or a duly authorized representative and as may be provided by law. [2011 1st sp.s. c 43 § 234; 1998 c 105 § 12; 1991 sp.s. c 13 § 35; 1986 c 312 § 902. Prior: 1985 c 405 § 507; 1985 c 57 § 28; 1975 1st ex.s. c 167 § 12.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.19.615 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.19.620 Motor vehicle transportation service—Rules and regulations. The director shall adopt and enforce rules as may be deemed necessary to accomplish the purpose of RCW 43.19.560 through 43.19.630, 43.41.130, and 43.41.140. The rules, in addition to other matters, shall provide authority for any agency director or his or her delegate to approve the use on official state business of personally owned or commercially owned rental passenger motor vehicles. Before such an authorization is made, it must first be reasonably determined that state owned passenger vehicles or other suitable transportation is not available at the time or location required or that the use of such other transportation would not be conducive to the economical, efficient, and effective conduct of business.

The rules shall be consistent with and shall carry out the objectives of the general policies and guidelines adopted by the office of financial management pursuant to RCW 43.41.130. [2011 1st sp.s. c 43 § 235; 2009 c 549 § 5069; 1989 c 57 § 7; 1979 c 151 § 103; 1975 1st ex.s. c 167 § 14.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.19.635 Motor vehicle transportation service—Unauthorized use of state vehicles—Procedure—Disciplinary action. (1) The governor, acting through the department and any other appropriate agency or agencies as he or she may direct, is empowered to utilize all reasonable means for detecting the unauthorized use of state owned motor vehicles, including the execution of agreements with the state patrol for compliance enforcement. Whenever such illegal use is discovered which involves a state employee, the employing agency shall proceed as provided by law to establish the amount, extent, and dollar value of any such use, including an opportunity for notice and hearing for the employee involved. When such illegal use is so established,

the agency shall assess its full cost of any mileage illegally used and shall recover such amounts by deductions from salary or allowances due to be paid to the offending official or employee by other means. Recovery of costs by the state under this subsection shall not preclude disciplinary or other action by the appropriate appointing authority or employing agency under subsection (2) of this section.

(2) Any willful and knowing violation of any provision of RCW 43.19.560 through 43.19.620, 43.41.130 and 43.41.140 shall subject the state official or employee committing such violation to disciplinary action by the appropriate appointing or employing agency. Such disciplinary action may include, but shall not be limited to, suspension without pay, or termination of employment in the case of repeated violations.

(3) Any casual or inadvertent violation of RCW 43.19.560 through 43.19.620, 43.41.130 and 43.41.140 may subject the state official or employee committing such violation to disciplinary action by the appropriate appointing authority or employing agency. Such disciplinary action may include, but need not be limited to, suspension without pay. [2011 1st sp.s. c 43 § 236; 2009 c 549 § 5071; 1975 1st ex.s. c 167 § 17.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.19.646 Coordinating the purchase and delivery of biodiesel—Reports. (1) The department must assist state agencies seeking to meet the biodiesel fuel requirements in RCW 43.19.642 by coordinating the purchase and delivery of biodiesel if requested by any state agency. The department may use long-term contracts of up to ten years, when purchasing from in-state suppliers who use predominantly in-state feedstock, to secure a sufficient and stable supply of biodiesel for use by state agencies.

(2) The department shall compile and analyze the reports submitted under RCW 43.19.642(3) and report in an electronic format its findings and recommendations to the governor and committees of the legislature with responsibility for energy issues, within sixty days from the end of each reporting period. The governor shall consider these reports in determining whether to temporarily suspend minimum renewable fuel content requirements as authorized under RCW 19.112.160. [2011 1st sp.s. c 43 § 237; 2006 c 338 § 12.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

Effective date—Severability—2006 c 338: See RCW 19.112.903 and 19.112.904.

43.19.648 Publicly owned vehicles, vessels, and construction equipment—Fuel usage—Tires. (1) Effective June 1, 2015, all state agencies, to the extent determined practicable by the rules adopted by the department of commerce pursuant to RCW 43.325.080, are required to satisfy one hundred percent of their fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel.

(2) Effective June 1, 2018, all local government subdivisions of the state, to the extent determined practicable by the rules adopted by the department of commerce pursuant to RCW 43.325.080, are required to satisfy one hundred percent of their fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel.

(3) In order to phase in this transition for the state, all state agencies, to the extent determined practicable by the department of commerce by rules adopted pursuant to RCW 43.325.080, are required to achieve forty percent fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel by June 1, 2013. The *department of general administration, in consultation with the department of commerce, shall report to the governor and the legislature by December 1, 2013, on what percentage of the state's fuel usage is from electricity or biofuel.

(4) Except for cars owned or operated by the Washington state patrol, when tires on vehicles in the state's motor vehicle fleet are replaced, they must be replaced with tires that have the same or better rolling resistance as the original tires.

(5) By December 31, 2015, the state must, to the extent practicable, install electrical outlets capable of charging electric vehicles in each of the state's fleet parking and maintenance facilities.

(6) The department of transportation's obligations under subsection (3) of this section are subject to the availability of amounts appropriated for the specific purpose identified in subsection (3) of this section.

(7) The department of transportation's obligations under subsection (5) of this section are subject to the availability of amounts appropriated for the specific purpose identified in subsection (5) of this section unless the department receives federal or private funds for the specific purpose identified in subsection (5) of this section.

(8) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540. [2011 c 353 § 4; 2009 c 459 § 7; 2007 c 348 § 202.]

*Reviser's note: The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Intent—2011 c 353: See note following RCW 36.70A.130.

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

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

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

43.19.663 Clean technologies—Purchase—Definitions. (1) The department, in cooperation with public agen-

cies, shall investigate opportunities to aggregate the purchase of clean technologies with other public agencies to determine whether or not combined purchasing can reduce the unit cost of clean technologies.

(2) State agencies that are retail electric customers shall investigate opportunities to aggregate the purchase of electricity produced from generation resources that are fueled by wind or solar energy for their facilities located within a single utility's service area, to determine whether or not combined purchasing can reduce the unit cost of those resources.

(3) No public agency is required under this section to purchase clean technologies at prohibitive costs.

(4)(a) "Electric utility" shall have the same meaning as provided under RCW 19.29A.010.

(b) "Clean technology" includes, but may not be limited to, alternative fueled hybrid-electric and fuel cell vehicles, and distributive power generation.

(c) "Distributive power generation" means the generation of electricity from an integrated or stand-alone power plant that generates electricity from wind energy, solar energy, or fuel cells.

(d) "Retail electric customer" shall have the same meaning as provided under RCW 19.29A.010.

(e) "Facility" means any building owned or leased by a public agency. [2011 1st sp.s. c 43 § 238; 2002 c 285 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.675 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.19.680 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.19.685 Lease covenants, conditions, and terms to be developed—Applicability. The director shall develop lease covenants, conditions, and terms which:

(1) Obligate the lessor to conduct or have conducted a walk-through survey of the leased premises;

(2) Obligate the lessor to implement identified energy conservation maintenance and operating procedures upon completion of the walk-through survey; and

(3) Obligate the lessor to undertake technical assistance studies and subsequent acquisition and installation of energy conservation measures if the director, in accordance with rules adopted by the department, determines that these studies and measures will both conserve energy and can be accomplished with a state funding contribution limited to the savings which would result in utility expenses during the term of the lease.

These lease covenants, conditions, and terms shall be incorporated into all specified new, renewed, and renegotiated leases executed on or after January 1, 1983. This section applies to all leases under which state occupancy is at least half of the facility space and includes an area greater than three thousand square feet. [2011 1st sp.s. c 43 § 239; 1982 c 48 § 4; 1980 c 172 § 6.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.702 List of statutes and regulations of each state on state purchasing which grant preference to in-state vendors. The director shall compile a list of the statutes and regulations, relating to state purchasing, of each state, which statutes and regulations the director believes grant a preference to vendors located within the state or goods manufactured within the state. At least once every twelve months the director shall update the list. [2011 1st sp.s. c 43 § 240; 1983 c 183 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.704 Rules for reciprocity in bidding. The director shall adopt and apply rules designed to provide for some reciprocity in bidding between Washington and those states having statutes or regulations on the list under RCW 43.19.702. The director shall have broad discretionary power in developing these rules and the rules shall provide for reciprocity only to the extent and in those instances where the director considers it appropriate. For the purpose of determining the lowest responsible bidder pursuant to RCW 43.19.1911, such rules shall (1) require the director to impose a reciprocity increase on bids when appropriate under the rules and (2) establish methods for determining the amount of the increase. In no instance shall such increase, if any, be paid to a vendor whose bid is accepted. [2011 1st sp.s. c 43 § 241; 1983 c 183 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.708 Certified veteran-owned businesses—Identification in vendor registry. The department shall identify in the department's vendor registry all vendors that are veteran-owned businesses as certified by the department of veterans affairs under RCW 43.60A.195. [2011 1st sp.s. c 43 § 242; 2010 c 5 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Purpose—Construction—2010 c 5: See notes following RCW 43.60A.010.

43.19.710 Consolidated mail service—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and RCW 43.19.715.

(1) "Consolidated mail service" means incoming, outgoing, and internal mail processing.

(2) "Incoming mail" means mail, packages, or similar items received by an agency, through the United States postal service, private carrier services, or other courier services.

(3) "Internal mail" means interagency mail, packages, or similar items that are delivered or to be delivered to a state agency, the legislature, the supreme court, or the court of appeals, and their officers and employees.

(4) "Outgoing mail" means mail, packages, or similar items processed for agencies to be sent through the United States postal service, private carrier services, or other courier services. [2011 1st sp.s. c 43 § 243; 1993 c 219 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—1993 c 219: "It is the intent of the legislature to consolidate mail functions for state government in a manner that will provide timely, effective, efficient, and less-costly mail service for state government." [1993 c 219 § 1.]

Additional notes found at www.leg.wa.gov

43.19.725 Small businesses—Increased registration in common vendor registration and bid notification system—Increased contracts and purchasing—Model plan—Technical assistance—Recordkeeping—Definitions. (1) The *department of general administration must develop a model plan for state agencies to increase: (a) The number of small businesses registering in the state's common vendor registration and bid notification system; (b) the number of such registered small businesses annually receiving state contracts for goods and services purchased by the state; and (c) the percentage of total state dollars spent for goods and services purchased from such registered small businesses. The goal of the plan is to increase the number of small businesses receiving state contracts as well as the percentage of total state dollars spent for goods and services from small businesses registered in the state's common vendor registration and bid notification system by at least fifty percent in fiscal year 2013, and at least one hundred percent in fiscal year 2015 over the baseline data reported for fiscal year 2011.

(2) All state purchasing agencies may adopt the model plan developed by the *department of general administration under subsection (1) of this section. A state purchasing agency that does not adopt the model plan must establish and implement a plan consistent with the goals of subsection (1) of this section.

(3) To facilitate the participation of small businesses in the provision of goods and services to the state, including purchases under chapters 39.29 and 43.105 RCW, the **state purchasing and material control director, under the powers granted by RCW 43.19.190 through 43.19.1939, and all state purchasing agencies operating under delegated authority granted under RCW 43.19.190 or 28B.10.029, must give technical assistance to small businesses regarding the state bidding process. Such technical assistance shall include providing opportunities for the agency to answer vendor questions about the bid solicitation requirements in advance of the bid due date and, upon request, holding a debriefing after the contract award to assist the vendor in understanding how to improve his or her responses for future competitive procurements.

(4)(a) All state purchasing agencies must maintain records of state purchasing contracts awarded to registered small businesses in order to track outcomes and provide accurate, verifiable information regarding the effects the technical assistance under subsection (3) of this section is having on the number of small businesses annually receiving state contracts for goods and services purchased by the state.

(b) The *department of general administration may provide assistance to other agencies attempting to maintain records of state purchasing contracts awarded to registered small businesses for the purposes described under (a) of this subsection.

(5) The definitions in this subsection apply throughout this section and RCW 43.19.727 unless the context clearly requires otherwise.

(a) "Small business" has the same meaning as defined in RCW 39.29.006.

(b) "State purchasing agencies" are limited to the *department of general administration, the department of information services, the office of financial management, the department of transportation, and institutions of higher education. [2011 c 358 § 2.]

Reviser's note: *(1) The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

** (2) The position of the state purchasing and material control director was eliminated by 2011 1st sp.s. c 43 § 205 and the responsibility given to the director of enterprise services.

Findings—Intent—2011 c 358: "The legislature finds that it is in the state's economic interest and serves a public purpose to promote and facilitate the fullest possible participation by Washington businesses of all sizes in the process by which goods and services are purchased by the state. The legislature further finds that large businesses have the resources to participate fully and effectively in the state's purchasing system, and because of many factors, including economies of scale, the purchasing system tends to create a preference in favor of large businesses and to disadvantage small businesses. The legislature intends, therefore, to assist, to the maximum extent possible, small businesses to participate in order to enhance and preserve competitive enterprise and to ensure that small businesses have a fair opportunity to be awarded contracts or subcontracts for goods and services purchased by the state. The legislature recognizes the need to increase accountability for the state's procurement and contracting practices. The legislature, therefore, intends to encourage all state agencies to maintain records of state purchasing contracts awarded to registered small businesses. The legislature further recognizes that access to a modernized system that categorizes a state business by such factors as its type and size, is an essential tool for receiving accurate and verifiable information regarding the effects any technical assistance is having on the number of small businesses annually receiving state contracts for goods and services purchased by the state." [2011 c 358 § 1.]

43.19.727 Small businesses—Reports—Web-based information system. (1) By November 15, 2013, and November 15th every two years thereafter, all state purchasing agencies shall submit a report to the appropriate committees of the legislature providing verifiable information regarding the effects the technical assistance under RCW 43.19.725(3) is having on the number of small businesses annually receiving state contracts for goods and services purchased by the state.

(2) By December 31, 2013, all state purchasing agencies must use the web-based information system created under subsection (3)(a) of this section to capture the data required under subsection (3)(a) of this section.

(3)(a) The *department of general administration, in consultation with the department of information services, the department of transportation, and the department of commerce, must develop and implement a web-based information system. The web-based information system must be used to capture data, track outcomes, and provide accurate and verifiable information regarding the effects the technical assistance under RCW 43.19.725(3) is having on the number of small businesses annually receiving state contracts for goods and services purchased by the state. Such measurable data shall include, but not be limited to: (i) The number of registered small businesses that have been awarded state procurement contracts, (ii) the percentage of total state dollars spent for goods and services purchased from registered small businesses, and (iii) the number of registered small busi-

nesses that have bid on but were not awarded state purchasing contracts.

(b) By October 1, 2011, the *department of general administration, in collaboration with the department of information services and the department of transportation, shall submit a report to the appropriate committees of the legislature detailing the projected cost associated with the implementation and maintenance of the web-based information system.

(c) By September 1, 2012, the *department of general administration, in collaboration with the department of information services and the department of transportation, shall submit a report to the appropriate committees of the legislature providing any recommendations for needed legislation to improve the collection of data required under (a) of this subsection.

(d) By December 31, 2013, the *department of general administration must make the web-based information system available to all state purchasing agencies.

(e) The *department of general administration may also make the web-based information system available to other agencies that would like to use the system for the purposes of chapter 358, Laws of 2011. [2011 c 358 § 3.]

***Reviser's note:** The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Findings—Intent—2011 c 358: See note following RCW 43.19.725.

43.19.730 Public printing revolving account. (1) The public printing revolving account is created in the custody of the state treasurer. All receipts from public printing must be deposited in the account. Expenditures from the account may be used only for administrative and operating purposes related to public printing. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) On October 1, 2011, the state treasurer shall transfer any residual funds remaining in the state printing plant revolving fund to the public printing revolving account established in this section. [2011 1st sp.s. c 43 § 307.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.733 Requirement to utilize print management contracts—Exemptions. (1) The department shall broker print management contracts for state agencies that are required to utilize print management contracts under this section.

(2) The department is authorized to broker print management contracts for other state agencies that choose to utilize these services.

(3) Except as provided under subsection (6) of this section, all state agencies with total annual average full-time equivalent staff that exceeds one thousand as determined by the office of financial management shall utilize print management services brokered by the department, as follows:

(a) Any agency with a copier and multifunctional device contract that is set to expire on or before December 31, 2011, may opt to:

(i) Renew the copier and multifunctional device contract; or

(ii) Enter a print management contract;

(b) Any agency with a copier and multifunctional device contract that is set to expire on or after January 1, 2012, shall begin planning for the transition to a print management contract six months prior to the expiration date of the contract. Upon expiration of the copier and multifunctional device contract, the agency shall utilize a print management contract; and

(c) Any agency with a copier and multifunctional device contract that is terminated on or after January 1, 2012, shall enter a print management contract.

(4) Until December 31, 2016, for each agency transitioning from a copier and multifunctional device contract to a print management contract, the print management contract should result in savings in comparison with the prior copier and multifunctional device contract.

(5) If an agency has more full-time equivalent employees than it had when it entered its most recently completed print management contract, the cost of a new print management contract may exceed the cost of the most recently completed print management contract.

(6) The director of financial management may exempt a state agency, or a program within a state agency, from the requirements of this section if the director deems it unfeasible or the department and agency could not reasonably reach an agreement regarding print management. [2011 1st sp.s. c 43 § 308.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.736 Print shop services—Bid solicitations—Confidential information. (1) State agencies, boards, commissions, and institutions of higher education requiring the services of a print shop may use public printing services provided by the department. If a print job is put out for bid, the department must be included in the bid solicitation. All solicitations must be posted on the state's common vendor registration and bid notification system and results provided to the department. All bid specifications must encourage the use of recycled paper and biodegradable ink must be used if feasible for the print job.

(2)(a) Except as provided in (b) of this subsection, the department shall print all agency materials that contain sensitive or personally identifiable information not publicly available.

(b) If it is more economically feasible to contract with a private vendor for the printing of agency materials that contain sensitive or personally identifiable information, the department shall require the vendor to enter into a confidentiality agreement with the department to protect the information that is provided as part of the print job. [2011 1st sp.s. c 43 § 309.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.739 Reducing costs—Agencies to consult with department. For every printing job and binding job ordered by a state agency, the agency shall consult with the depart-

ment on how to choose more economic and efficient options to reduce costs. [2011 1st sp.s. c 43 § 311.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.742 Agency management of print operations—Department rules and guidelines. To improve the efficiency and minimize the costs of agency-based printing, the department shall establish rules and guidelines for all agencies to use in managing their printing operations, including both agency-based printing and those jobs that require the services of a print shop, as based on the successes of implementation of existing print management programs in state agencies. At a minimum, the rules and guidelines must implement managed print strategies to track, manage, and reduce agency-based printing. [2011 1st sp.s. c 43 § 312.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.745 Agency use of envelopes—Standardization. (1) The department shall consult with the office of financial management and state agencies to more efficiently manage the use of envelopes by standardizing them to the extent feasible given the business needs of state agencies.

(2) All state agencies with total annual average full-time equivalent staff that exceeds five hundred as determined by the office of financial management shall cooperate with the department in efforts to standardize envelopes under subsection (1) of this section. In the event that an agency is updating a mailing, the agency shall transition to an envelope recommended by the department, unless the office of financial management considers the change unfeasible.

(3) State agencies with five hundred total annual average full-time equivalent staff or less, as determined by the office of financial management, are encouraged to cooperate with the office to standardize envelopes under this section. [2011 1st sp.s. c 43 § 314.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.748 Public printing for state agencies and municipal corporations—Exceptions to in-state requirements. All printing, binding, and stationery work done for any state agency, county, city, town, port district, or school district in this state shall be done within the state, and all proposals, requests, or invitations to submit bids, prices, or contracts thereon, and all contracts for such work, shall so stipulate: PROVIDED, That whenever it is established that any such work cannot be executed within the state, or that the lowest charge for which it can be procured within the state, exceeds the charge usually and customarily made to private individuals and corporations for work of similar character and quality, or that all bids for the work or any part thereof are excessive and not reasonably competitive, the officers of any such public corporation may have the work done outside the state. [1999 c 365 § 1; 1965 c 8 § 43.78.130. Prior: 1919 c 80 § 1; RRS § 10335. Formerly RCW 43.78.130.]

43.19.751 Public printing for state agencies and municipal corporations—Allowance of claims. No bill or claim for any such work shall be allowed by any officer of a

state agency or public corporation or be paid out of its funds, unless it appears that the work was executed within the state or that the execution thereof within the state could not have been procured, or procured at reasonable and competitive rates, and no action shall be maintained against such corporation or its officers upon any contract for such work unless it is alleged and proved that the work was done within the state or that the bids received therefor were unreasonable or not truly competitive. [1999 c 365 § 2; 1965 c 8 § 43.78.140. Prior: 1919 c 80 § 2; RRS § 10336. Formerly RCW 43.78.140.]

43.19.754 Public printing for state agencies and municipal corporations—Contracts for out-of-state work. All contracts for such work to be done outside the state shall require that it be executed under conditions of employment which shall substantially conform to the laws of this state respecting hours of labor, the minimum wage scale, and the rules and regulations of the department of labor and industries regarding conditions of employment, hours of labor, and minimum wages, and shall be favorably comparable to the labor standards and practices of the lowest competent bidder within the state, and the violation of any such provision of any contract shall be ground for cancellation thereof. [1994 c 164 § 12; 1973 1st ex.s. c 154 § 86; 1965 c 8 § 43.78.150. Prior: 1953 c 287 § 1; 1919 c 80 § 3; RRS § 10337. Formerly RCW 43.78.150.]

Additional notes found at www.leg.wa.gov

43.19.757 Public printing for state agencies and municipal corporations—Quality and workmanship requirements. Nothing in *RCW 43.78.130, 43.78.140 and 43.78.150 shall be construed as requiring any public official to accept any such work of inferior quality or workmanship. [1965 c 8 § 43.78.160. Prior: 1919 c 80 § 4; RRS § 10338. Formerly RCW 43.78.160.]

*Reviser's note: RCW 43.78.130, 43.78.140, and 43.78.150 were recodified as RCW 43.19.748, 43.19.751, and 43.19.754, respectively, pursuant to 2011 1st sp.s. c 43 § 315.

43.19.760 Risk management—Principles. It is the policy of the state for the management of risks to which it is exposed to apply the following principles consistently in a state program of risk management:

- (1) To identify those liability and property risks which may have a significant economic impact on the state;
- (2) To evaluate risk in terms of the state's ability to fund potential loss rather than the ability of an individual agency to fund potential loss;
- (3) To eliminate or improve conditions and practices which contribute to loss whenever practical;
- (4) To assume risks to the maximum extent practical;
- (5) To provide flexibility within the state program to meet the unique requirements of any state agency for insurance coverage or service;
- (6) To purchase commercial insurance:
 - (a) When the size and nature of the potential loss make it in the best interest of the state to purchase commercial insurance; or
 - (b) When the fiduciary of encumbered property insists on commercial insurance; or

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(c) When the interest protected is not a state interest and an insurance company is desirable as an intermediary; or

(d) When services provided by an insurance company are considered necessary; or

(e) When services or coverages provided by an insurance company are cost-effective; or

(f) When otherwise required by statute; and

(7) To develop plans for the management and protection of the revenues and assets of the state. [1985 c 188 § 2; 1977 ex.s. c 270 § 1. Formerly RCW 43.41.280, 43.19.19361.]

Intent—2002 c 332: "It is the intent of the legislature that state risk management should have increased visibility at a policy level in state government. This increased visibility can best be accomplished by the transfer of the statewide risk management function from the department of general administration to the office of financial management. The legislature intends that this transfer will result in increasing visibility for the management and funding of statewide risk, increasing executive involvement in risk management issues, and improving statewide risk management accountability." [2002 c 332 § 1.]

Effective date—2002 c 332: "This act shall take effect July 1, 2002." [2002 c 332 § 26.]

Additional notes found at www.leg.wa.gov

43.19.763 Risk management—Definitions. As used in chapter 43, Laws of 2011 1st sp. sess.:

(1) "Department" means the department of enterprise services;

(2) "Director" means the director of enterprise services;

(3) "Risk management" means the total effort and continuous step by step process of risk identification, measurement, minimization, assumption, transfer, and loss adjustment which is aimed at protecting assets and revenues against accidental loss; and

(4) "State agency" includes any state office, agency, commission, department, or institution, including colleges, universities, and community colleges, financed in whole or part from funds appropriated by the legislature. [2011 1st sp.s. c 43 § 501; 1977 ex.s. c 270 § 3. Formerly RCW 43.41.290, 43.19.19363.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—2002 c 332: See note following RCW 43.19.760.

Additional notes found at www.leg.wa.gov

43.19.766 Risk management—Office created—Powers and duties. There is hereby created an office of risk management within the department of enterprise services. The director shall implement the risk management policy in RCW 43.19.760 through the office of risk management. The director shall appoint a risk manager to supervise the office of risk management. The office of risk management shall make recommendations when appropriate to state agencies on the application of prudent safety, security, loss prevention, and loss minimization methods so as to reduce or avoid risk or loss. [2011 1st sp.s. c 43 § 502; 2002 c 332 § 7; 1998 c 245 § 55; 1987 c 505 § 25; 1985 c 188 § 3; 1977 ex.s. c 270 § 2. Formerly RCW 43.41.300, 43.19.19362.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Effective date—2002 c 332: See notes following RCW 43.19.760.

Additional notes found at www.leg.wa.gov

43.19.769 Risk management—Procurement of insurance and bonds. As a means of providing for the procurement of insurance and bonds on a volume rate basis, the director shall purchase or contract for the needs of state agencies in relation to all such insurance and bonds: PROVIDED, That authority to purchase insurance may be delegated to state agencies. Insurance in force shall be reported to the office of risk management periodically under rules established by the director. Nothing contained in this section shall prohibit the use of licensed agents or brokers for the procurement and service of insurance.

The amounts of insurance or bond coverage shall be as fixed by law, or if not fixed by law, such amounts shall be as fixed by the director.

The premium cost for insurance acquired and bonds furnished shall be paid from appropriations or other appropriate resources available to the state agency or agencies for which procurement is made, and all vouchers drawn in payment therefor shall bear the written approval of the office of risk management prior to the issuance of the warrant in payment therefor. Where deemed advisable the premium cost for insurance and bonds may be paid by the risk management administration account which shall be reimbursed by the agency or agencies for which procurement is made. [2011 1st sp.s. c 43 § 503; 2002 c 332 § 5; 1998 c 105 § 8; 1985 c 188 § 1; 1977 ex.s. c 270 § 6; 1975 c 40 § 9; 1965 c 8 § 43.19.1935. Prior: 1959 c 178 § 18. Formerly RCW 43.41.310, 43.19.1935.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Effective date—2002 c 332: See notes following RCW 43.19.760.

Powers and duties of director of enterprise services as to official bonds:
RCW 43.19.784.

Additional notes found at www.leg.wa.gov

43.19.772 Risk management—Procurement of insurance for municipalities. The director, through the office of risk management, may purchase, or contract for the purchase of, property and liability insurance for any municipality upon request of the municipality.

As used in this section, "municipality" means any city, town, county, special purpose district, municipal corporation, or political subdivision of the state of Washington. [2011 1st sp.s. c 43 § 504; 2002 c 332 § 6; 1985 c 188 § 5. Formerly RCW 43.41.320, 43.19.1936.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Effective date—2002 c 332: See notes following RCW 43.19.760.

43.19.775 Risk management—Enforcement of bonds under RCW 39.59.010. The director, through the office of risk management, shall receive and enforce bonds posted pursuant to RCW 39.59.010 (3) and (4). [2011 1st sp.s. c 43 § 505; 2002 c 332 § 8; 1988 c 281 § 6. Formerly RCW 43.41.330, 43.19.19367.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Effective date—2002 c 332: See notes following RCW 43.19.760.

Additional notes found at www.leg.wa.gov

43.19.778 Risk management—Liability account—Actuarial studies. The department shall conduct periodic actuarial studies to determine the amount of money needed to adequately fund the liability account. [2011 1st sp.s. c 43 § 506; 2002 c 332 § 9; 1989 c 419 § 11. Formerly RCW 43.41.340, 43.19.19369.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Effective date—2002 c 332: See notes following RCW 43.19.760.

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

Liability account created: RCW 4.92.130.

43.19.781 Risk management—Safety and loss control program. (1) The office of risk management shall establish a coordinated safety and loss control program to reduce liability exposure, safeguard state assets, and reduce costs associated with state liability and property losses.

(2) State agencies shall provide top management support and commitment to safety and loss control, and develop awareness through education, training, and information sharing.

(3) The office of risk management shall develop and maintain centralized loss history information for the purpose of identifying and analyzing risk exposures. Loss history information shall be privileged and confidential and reported only to appropriate agencies.

(4) The office of risk management shall develop methods of statistically monitoring agency and statewide effectiveness in controlling losses.

(5) The office of risk management will routinely review agency loss control programs as appropriate to suggest improvements, and observe and recognize successful safety policies and procedures.

(6) The office of risk management shall provide direct assistance to smaller state agencies in technical aspects of proper safety and loss control procedures, upon request. [1989 c 419 § 6. Formerly RCW 43.41.350, 43.19.19368.]

Intent—2002 c 332: See note following RCW 43.19.760.

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

43.19.784 Bonds of state officers and employees—Fixing amount—Additional bonds—Exemptions—Duties of director. The director shall:

(1) Fix the amount of bond to be given by each appointive state officer and each employee of the state in all cases where it is not fixed by law;

(2) Require the giving of an additional bond, or a bond in a greater amount than provided by law, in all cases where in his or her judgment the statutory bond is not sufficient in amount to cover the liabilities of the officer or employee;

(3) Exempt subordinate employees from giving bond when in his or her judgment their powers and duties are such

as not to require a bond. [2011 1st sp.s. c 43 § 507; 2009 c 549 § 5121; 1975 c 40 § 13. Formerly RCW 43.41.360, 43.19.540.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—2002 c 332: See note following RCW 43.19.760.

43.19.791 Data processing revolving fund—Created—Use. There is created a revolving fund to be known as the data processing revolving fund in the custody of the state treasurer. The revolving fund shall be used for the acquisition of equipment, software, supplies, and services and the payment of salaries, wages, and other costs incidental to the acquisition, development, operation, and administration of information services, telecommunications, systems, software, supplies and equipment, including the payment of principal and interest on bonds issued for capital projects, by the department, Washington State University's computer services center, the department of enterprise services' personnel information systems group and financial systems management group, and other users as determined by the office of financial management. The revolving fund is subject to the allotment procedure provided under chapter 43.88 RCW. The chief information officer or the chief information officer's designee, with the approval of the technology services board, is authorized to expend up to one million dollars per fiscal biennium for the technology services board to conduct independent technical and financial analysis of proposed information technology projects, and such an expenditure does not require an appropriation. Disbursements from the revolving fund for the services component of the department are not subject to appropriation. Disbursements for the strategic planning and policy component of the department are subject to appropriation. All disbursements from the fund are subject to the allotment procedures provided under chapter 43.88 RCW. The department shall establish and implement a billing structure to assure all agencies pay an equitable share of the costs.

During the 2009-2011 fiscal biennium, the legislature may transfer from the data processing revolving account to the state general fund such amounts as reflect the excess fund balance.

As used in this section, the word "supplies" shall not be interpreted to delegate or abrogate the division of purchasing's responsibilities and authority to purchase supplies as described in RCW 43.19.190 and 43.19.200. [2011 1st sp.s. c 43 § 601; 2011 c 5 § 912; 2010 1st sp.s. c 37 § 931; 1999 c 80 § 8; 1992 c 235 § 6; 1987 c 504 § 11; 1983 c 3 § 116; 1974 ex.s. c 129 § 1. Formerly RCW 43.105.080.]

Reviser's note: This section was amended by 2011 c 5 § 912 and by 2011 1st sp.s. c 43 § 601, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 c 5: See note following RCW 43.79.487.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

43.19.794 Departmental authority as certification authority for electronic authentication. The department of [2011 RCW Supp—page 872]

enterprise services may become a licensed certification authority, under chapter 19.34 RCW, for the purpose of providing services to agencies, local governments, and other entities and persons for purposes of official state business. The department is not subject to RCW 19.34.100(1)(a). The department shall only issue certificates, as defined in RCW 19.34.020, in which the subscriber is:

(1) The state of Washington or a department, office, or agency of the state;

(2) A city, county, district, or other municipal corporation, or a department, office, or agency of the city, county, district, or municipal corporation;

(3) An agent or employee of an entity described by subsection (1) or (2) of this section, for purposes of official public business;

(4) Any other person or entity engaged in matters of official public business, however, such certificates shall be limited only to matters of official public business. The department may issue certificates to such persons or entities only if after issuing a request for proposals from certification authorities licensed under chapter 19.34 RCW and review of the submitted proposals, makes a determination that such private services are not sufficient to meet the department's published requirements. The department must set forth in writing the basis of any such determination and provide procedures for challenge of the determination as provided by the state procurement requirements; or

(5) An applicant for a license as a certification authority for the purpose of compliance with RCW 19.34.100(1)(a). [2011 1st sp.s. c 43 § 602; 1999 c 287 § 18; 1997 c 27 § 29. Formerly RCW 43.105.320.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.19.797 Purchase of wireless devices or services.

(1) State agencies that are purchasing wireless devices or services must make such purchases through the state master contract, unless the state agency provides to the office of the chief information officer evidence that the state agency is securing its wireless devices or services from another source for a lower cost than through participation in the state master contract.

(2) For the purposes of this section, "state agency" means any office, department, board, commission, or other unit of state government, but does not include a unit of state government headed by a statewide elected official, an institution of higher education as defined in RCW 28B.10.016, the higher education coordinating board, the state board for community and technical colleges, or agencies of the legislative or judicial branches of state government. [2011 1st sp.s. c 43 § 734; 2010 c 282 § 2. Formerly RCW 43.105.410.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.900 Transfer of powers, duties, functions, and assets of department of general administration. (1) The department of general administration is hereby abolished and its powers, duties, and functions are transferred to the department of enterprise services. All references to the director or department of general administration in the Revised Code of

Washington shall be construed to mean the director or the department of enterprise services.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of general administration shall be delivered to the custody of the department of enterprise services. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of general administration shall be made available to the department of enterprise services. All funds, credits, or other assets held by the department of general administration shall be assigned to the department of enterprise services.

(b) Any appropriations made to the department of general administration shall, on October 1, 2011, be transferred and credited to the department of enterprise services.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the department of general administration shall be continued and acted upon by the department of enterprise services. All existing contracts and obligations shall remain in full force and shall be performed by the department of enterprise services.

(4) The transfer of the powers, duties, functions, and personnel of the department of general administration shall not affect the validity of any act performed before October 1, 2011.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(6) All employees of the department of general administration engaged in performing the powers, functions, and duties transferred to the department of enterprise services, are transferred to the department of enterprise services. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of enterprise services to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service law.

(7) Unless or until modified by the public employment relations commission pursuant to RCW 41.80.911:

(a) The bargaining units of employees at the department of general administration existing on October 1, 2011, shall be considered appropriate units at the department of enterprise services and will be so certified by the public employment relations commission.

(b) The exclusive bargaining representatives recognized as representing the bargaining units of employees at the department of general administration existing on October 1, 2011, shall continue as the exclusive bargaining representatives of the transferred bargaining units without the necessity of an election. [2011 1st sp.s. c 43 § 1002.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.901 Transfer of certain powers, duties, functions, and assets of the public printer. (1) The public printer is hereby abolished and its powers, duties, and functions, to the extent provided in chapter 43, Laws of 2011 1st sp. sess., are transferred to the department of enterprise services. All references to the public printer in the Revised Code of Washington shall be construed to mean the director or the department of enterprise services.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the public printer shall be delivered to the custody of the department of enterprise services. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the public printer shall be made available to the department of enterprise services. All funds, credits, or other assets held by the public printer shall be assigned to the department of enterprise services.

(b) Any appropriations made to the public printer shall, on October 1, 2011, be transferred and credited to the department of enterprise services.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the public printer shall be continued and acted upon by the department of enterprise services. All existing contracts and obligations shall remain in full force and shall be performed by the department of enterprise services.

(4) The transfer of the powers, duties, functions, and personnel of the public printer shall not affect the validity of any act performed before October 1, 2011.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(6) All employees of the public printer engaged in performing the powers, functions, and duties transferred to the department of enterprise services are transferred to the department of enterprise services.

(a) The commercial agreement between the graphic communications conference of the international brotherhood of teamsters, local 767M and the department of printing-bindery that became effective July 1, 2007, shall remain in effect during its duration. Upon expiration, the parties may extend the terms of the agreement; however, the agreement may not be extended beyond September 30, 2011. Beginning October 1, 2011, chapter 41.80 RCW shall apply to the department of enterprise services with respect to employees in positions formerly covered under the expired commercial agreement.

(b) The commercial agreement between the graphic communications conference of the international brotherhood of teamsters, local 767M and the department of printing-litho that became effective July 1, 2007, shall remain in effect during its duration. Upon expiration, the parties may extend the terms of the agreement; however, the agreement may not be extended beyond September 30, 2011. Beginning October 1, 2011, chapter 41.80 RCW shall apply to the department of enterprise services with respect to the employees in positions formerly covered under the expired commercial agreement.

(c) The typographical contract between the communications workers of America, the newspaper guild, local 37082, and the department of printing-typographical that became effective July 1, 2007, shall remain in effect during its duration. Upon expiration, the parties may extend the terms of the agreement; however, the agreement may not be extended beyond September 30, 2011. Beginning October 1, 2011, chapter 41.80 RCW shall apply to the department of enterprise services with respect to the employees in positions formerly covered under the expired typographical contract.

(d) All other employees of the public printer not covered by the contracts and agreements specified in (a) through (c) of this subsection shall be exempt from chapter 41.06 RCW until October 1, 2011, at which time these employees shall be subject to chapter 41.06 RCW, unless otherwise deemed exempt in accordance with that chapter.

(7) Unless or until modified by the public employment relations commission pursuant to RCW 41.80.911:

(a) The bargaining units of printing craft employees existing on October 1, 2011, shall be considered an appropriate unit at the department of enterprise services and will be so certified by the public employment relations commission; and

(b) The exclusive bargaining representatives recognized as representing the bargaining units of printing craft employees existing on October 1, 2011, shall continue as the exclusive bargaining representatives of the transferred bargaining units without the necessity of an election. [2011 1st sp.s. c 43 § 1003.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.902 Transfer of certain powers, duties, functions, and assets of the department of information services. (1) The powers, duties, and functions of the department of information services as set forth in RCW 43.19.791, 43.19.794, and *section 614 of this act are hereby transferred to the department of enterprise services.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of information services pertaining to the powers, duties, and functions transferred shall be delivered to the custody of the department of enterprise services. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of information services in carrying out the powers, duties, and functions transferred shall be made available to the department of enterprise services. All funds, credits, or other assets held by the department of information services in connection with the powers, duties, and functions transferred shall be assigned to the department of enterprise services.

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(b) Any appropriations made to the department of information services for carrying out the powers, functions, and duties transferred shall, on October 1, 2011, be transferred and credited to the department of enterprise services.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the department of information services pertaining to the powers, duties, and functions transferred shall be continued and acted upon by the department of enterprise services. All existing contracts and obligations shall remain in full force and shall be performed by the department of enterprise services.

(4) The transfer of the powers, duties, functions, and personnel of the department of information services shall not affect the validity of any act performed before October 1, 2011.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(6) All employees of the department of information services engaged in performing the powers, functions, and duties transferred to the department of enterprise services, are transferred to the department of enterprise services. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of enterprise services to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service law.

(7) Unless or until modified by the public employment relations commission pursuant to RCW 41.80.911:

(a) The portions of the bargaining units of employees at the department of information services existing on October 1, 2011, shall be considered appropriate units at the department of enterprise services and will be so certified by the public employment relations commission.

(b) The exclusive bargaining representatives recognized as representing the portions of the bargaining units of employees at the department of information services existing on October 1, 2011, shall continue as the exclusive bargaining representative of the transferred bargaining units without the necessity of an election. [2011 1st sp.s. c 43 § 1004.]

***Reviser's note:** The reference to section 614 of this act appears to be erroneous. Section 734 of this act, recodified as RCW 43.19.797, was apparently intended.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.903 Transfer of certain powers, duties, functions, and assets of the department of personnel. (1) Those powers, duties, and functions of the department of personnel being transferred to the department of enterprise ser-

vices as set forth in Part IV, chapter 43, Laws of 2011 1st sp. sess. are hereby transferred to the department of enterprise services.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of personnel pertaining to the powers, duties, and functions transferred shall be delivered to the custody of the department of enterprise services. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of personnel in carrying out the powers, duties, and functions transferred shall be made available to the department of enterprise services. All funds, credits, or other assets held by the department of personnel in connection with the powers, duties, and functions transferred shall be assigned to the department of enterprise services.

(b) Any appropriations made to the department of personnel for carrying out the powers, functions, and duties transferred shall, on October 1, 2011, be transferred and credited to the department of enterprise services.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the department of personnel pertaining to the powers, duties, and functions transferred shall be continued and acted upon by the department of enterprise services. All existing contracts and obligations shall remain in full force and shall be performed by the department of enterprise services.

(4) The transfer of the powers, duties, functions, and personnel of the department of personnel shall not affect the validity of any act performed before October 1, 2011.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(6) All employees of the department of personnel engaged in performing the powers, functions, and duties transferred to the department of enterprise services, are transferred to the department of enterprise services. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of enterprise services to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service law. [2011 1st sp.s. c 43 § 1005.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19.904 Transfer of certain powers, duties, functions, and assets of the office of financial management. (1) The powers, duties, and functions of the office of financial management as set forth in Part V, chapter 43, Laws of 2011

1st sp. sess. are hereby transferred to the department of enterprise services.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the office of financial management pertaining to the powers, duties, and functions transferred shall be delivered to the custody of the department of enterprise services. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the office of financial management in carrying out the powers, duties, and functions transferred shall be made available to the department of enterprise services. All funds, credits, or other assets held by the office of financial management in connection with the powers, duties, and functions transferred shall be assigned to the department of enterprise services.

(b) Any appropriations made to the office of financial management for carrying out the powers, functions, and duties transferred shall, on October 1, 2011, be transferred and credited to the department of enterprise services.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the office of financial management pertaining to the powers, duties, and functions transferred shall be continued and acted upon by the department of enterprise services. All existing contracts and obligations shall remain in full force and shall be performed by the department of enterprise services.

(4) The transfer of the powers, duties, functions, and personnel of the office of financial management shall not affect the validity of any act performed before October 1, 2011.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(6) All employees of the office of financial management engaged in performing the powers, functions, and duties transferred to the department of enterprise services, are transferred to the department of enterprise services. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to department of enterprise services to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service law. [2011 1st sp.s. c 43 § 1007.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Chapter 43.19A RCW

RECYCLED PRODUCT PROCUREMENT

Sections

- 43.19A.010 Definitions.
43.19A.022 Recycled content paper for printers and copiers—Purchasing priority.

43.19A.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Biosolids" means municipal sewage sludge or septic tank septage sludge that meets the requirements of chapter 70.95J RCW.

(2) "Compost products" means mulch, soil amendments, ground cover, or other landscaping material derived from the biological or mechanical conversion of biosolids or cellulose-containing waste materials.

(3) "Department" means the department of enterprise services.

(4) "Director" means the director of the department of enterprise services.

(5) "Local government" means a city, town, county, special purpose district, school district, or other municipal corporation.

(6) "Lubricating oil" means petroleum-based oils for reducing friction in engine parts and other mechanical parts.

(7) "Mixed waste paper" means assorted low-value grades of paper that have not been separated into individual grades of paper at the point of collection.

(8) "Municipal sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a publicly owned wastewater treatment plant.

(9) "Paper and paper products" means all items manufactured from paper or paperboard.

(10) "Postconsumer waste" means a material or product that has served its intended use and has been discarded for disposal or recovery by a final consumer.

(11) "Procurement officer" means the person that has the primary responsibility for procurement of materials or products.

(12) "Recycled content product" or "recycled product" means a product containing recycled materials.

(13) "Recycled materials" means waste materials and by-products that have been recovered or diverted from solid waste and that can be utilized in place of a raw or virgin material in manufacturing a product and consists of materials derived from postconsumer waste, manufacturing waste, industrial scrap, agricultural wastes, and other items, all of which can be used in the manufacture of new or recycled products.

(14) "Re-refined oils" means used lubricating oils from which the physical and chemical contaminants acquired through previous use have been removed through a refining process. Re-refining may include distillation, hydrotreating, or treatments employing acid, caustic, solvent, clay, or other chemicals, or other physical treatments other than those used in reclaiming.

(15) "State agency" means all units of state government, including divisions of the governor's office, the legislature, the judiciary, state agencies and departments, correctional

institutions, vocational technical institutions, and universities and colleges.

(16) "USEPA product standards" means the product standards of the United States environmental protection agency for recycled content published in the code of federal regulations. [2011 1st sp.s. c 43 § 250; 1992 c 174 § 12; 1991 c 297 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.19A.022 Recycled content paper for printers and copiers—Purchasing priority. (1) All state agencies shall purchase one hundred percent recycled content white cut sheet bond paper used in office printers and copiers. State agencies are encouraged to give priority to purchasing from companies that produce paper in facilities that generate energy from a renewable energy source.

(2) State agencies that utilize office printers and copiers that, after reasonable attempts, cannot be calibrated to utilize such paper referenced in subsection (1) of this section, must for those models of equipment:

(a) Purchase paper at the highest recycled content that can be utilized efficiently by the copier or printer;

(b) At the time of lease renewal or at the end of the life-cycle, either lease or purchase a model that will efficiently utilize one hundred percent recycled content white cut sheet bond paper;

(3) Printed projects that require the use of high volume production inserters or high-speed digital devices, such as those used by the department of enterprise services, are not required to meet the one hundred percent recycled content white cut sheet bond paper standard, but must utilize the highest recycled content that can be utilized efficiently by such equipment and not impede the business of agencies.

(4) The department of enterprise services and the department of information services shall work together to identify for use by agencies one hundred percent recycled paper products that process efficiently through high-speed production equipment and do not impede the business of agencies. [2011 1st sp.s. c 43 § 251; 2009 c 356 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Chapter 43.20 RCW

STATE BOARD OF HEALTH

Sections

- 43.20.050 Powers and duties of state board of health—Rule making—Delegation of authority—Enforcement of rules.
43.20.110 Repealed.
43.20.140 Repealed.
43.20.200 Repealed.

43.20.050 Powers and duties of state board of health—Rule making—Delegation of authority—Enforcement of rules. (1) The state board of health shall provide a forum for the development of public health policy in Washington state. It is authorized to recommend to the secretary means for obtaining appropriate citizen and professional involvement in all public health policy formulation

and other matters related to the powers and duties of the department. It is further empowered to hold hearings and explore ways to improve the health status of the citizenry.

In fulfilling its responsibilities under this subsection, the state board may create ad hoc committees or other such committees of limited duration as necessary.

(2) In order to protect public health, the state board of health shall:

(a) Adopt rules for group A public water systems, as defined in RCW 70.119A.020, necessary to assure safe and reliable public drinking water and to protect the public health. Such rules shall establish requirements regarding:

(i) The design and construction of public water system facilities, including proper sizing of pipes and storage for the number and type of customers;

(ii) Drinking water quality standards, monitoring requirements, and laboratory certification requirements;

(iii) Public water system management and reporting requirements;

(iv) Public water system planning and emergency response requirements;

(v) Public water system operation and maintenance requirements;

(vi) Water quality, reliability, and management of existing but inadequate public water systems; and

(vii) Quality standards for the source or supply, or both source and supply, of water for bottled water plants;

(b) Adopt rules as necessary for group B public water systems, as defined in RCW 70.119A.020. The rules shall, at a minimum, establish requirements regarding the initial design and construction of a public water system. The state board of health rules may waive some or all requirements for group B public water systems with fewer than five connections;

(c) Adopt rules and standards for prevention, control, and abatement of health hazards and nuisances related to the disposal of human and animal excreta and animal remains;

(d) Adopt rules controlling public health related to environmental conditions including but not limited to heating, lighting, ventilation, sanitary facilities, and cleanliness in public facilities including but not limited to food service establishments, schools, recreational facilities, and transient accommodations;

(e) Adopt rules for the imposition and use of isolation and quarantine;

(f) Adopt rules for the prevention and control of infectious and noninfectious diseases, including food and vector borne illness, and rules governing the receipt and conveyance of remains of deceased persons, and such other sanitary matters as may best be controlled by universal rule; and

(g) Adopt rules for accessing existing databases for the purposes of performing health related research.

(3) The state board shall adopt rules for the design, construction, installation, operation, and maintenance of those on-site sewage systems with design flows of less than three thousand five hundred gallons per day.

(4) The state board may delegate any of its rule-adopting authority to the secretary and rescind such delegated authority.

(5) All local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs,

constables, and all other officers and employees of the state, or any county, city, or township thereof, shall enforce all rules adopted by the state board of health. In the event of failure or refusal on the part of any member of such boards or any other official or person mentioned in this section to so act, he or she shall be subject to a fine of not less than fifty dollars, upon first conviction, and not less than one hundred dollars upon second conviction.

(6) The state board may advise the secretary on health policy issues pertaining to the department of health and the state. [2011 c 27 § 1; 2009 c 495 § 1; 2007 c 343 § 11; 1993 c 492 § 489; 1992 c 34 § 4. Prior: 1989 1st ex.s. c 9 § 210; 1989 c 207 § 1; 1985 c 213 § 1; 1979 c 141 § 49; 1967 ex.s. c 102 § 9; 1965 c 8 § 43.20.050; prior: (i) 1901 c 116 § 1; 1891 c 98 § 2; RRS § 6001. (ii) 1921 c 7 § 58; RRS § 10816.]

Effective date—2009 c 495: "Except for section 9 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2009]." [2009 c 495 § 17.]

Captions and part headings not law—2007 c 343: See RCW 70.118B.900.

Findings—1993 c 492: "The legislature finds that our health and financial security are jeopardized by our ever increasing demand for health care and by current health insurance and health system practices. Current health system practices encourage public demand for unneeded, ineffective, and sometimes dangerous health treatments. These practices often result in unaffordable cost increases that far exceed ordinary inflation for essential care. Current total health care expenditure rates should be sufficient to provide access to essential health care interventions to all within a reformed, efficient system.

The legislature finds that too many of our state's residents are without health insurance, that each year many individuals and families are forced into poverty because of serious illness, and that many must leave gainful employment to be eligible for publicly funded medical services. Additionally, thousands of citizens are at risk of losing adequate health insurance, have had insurance canceled recently, or cannot afford to renew existing coverage.

The legislature finds that businesses find it difficult to pay for health insurance and remain competitive in a global economy, and that individuals, the poor, and small businesses bear an inequitable health insurance burden.

The legislature finds that persons of color have significantly higher rates of mortality and poor health outcomes, and substantially lower numbers and percentages of persons covered by health insurance than the general population. It is intended that chapter 492, Laws of 1993 make provisions to address the special health care needs of these racial and ethnic populations in order to improve their health status.

The legislature finds that uncontrolled demand and expenditures for health care are eroding the ability of families, businesses, communities, and governments to invest in other enterprises that promote health, maintain independence, and ensure continued economic welfare. Housing, nutrition, education, and the environment are all diminished as we invest ever increasing shares of wealth in health care treatments.

The legislature finds that while immediate steps must be taken, a long-term plan of reform is also needed." [1993 c 492 § 101.]

Intent—1993 c 492: "(1) The legislature intends that state government policy stabilize health services costs, assure access to essential services for all residents, actively address the health care needs of persons of color, improve the public's health, and reduce unwarranted health services costs to preserve the viability of nonhealth care businesses.

(2) The legislature intends that:

(a) Total health services costs be stabilized and kept within rates of increase similar to the rates of personal income growth within a publicly regulated, private marketplace that preserves personal choice;

(b) State residents be enrolled in the certified health plan of their choice that meets state standards regarding affordability, accessibility, cost-effectiveness, and clinical efficaciousness;

(c) State residents be able to choose health services from the full range of health care providers, as defined in RCW 43.72.010(12), in a manner consistent with good health services management, quality assurance, and cost effectiveness;

(d) Individuals and businesses have the option to purchase any health

services they may choose in addition to those included in the uniform benefits package or supplemental benefits;

(e) All state residents, businesses, employees, and government participate in payment for health services, with total costs to individuals on a sliding scale based on income to encourage efficient and appropriate utilization of services;

(f) These goals be accomplished within a reformed system using private service providers and facilities in a way that allows consumers to choose among competing plans operating within budget limits and other regulations that promote the public good; and

(g) A policy of coordinating the delivery, purchase, and provision of health services among the federal, state, local, and tribal governments be encouraged and accomplished by chapter 492, Laws of 1993.

(3) Accordingly, the legislature intends that chapter 492, Laws of 1993 provide both early implementation measures and a process for overall reform of the health services system." [1993 c 492 § 102.]

Rules and regulations—Visual and auditory screening of pupils: RCW 28A.210.020.

Additional notes found at www.leg.wa.gov

43.20.110 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.20.140 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.20.200 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.20A RCW

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Sections

- 43.20A.365 Recodified as RCW 74.09.653.
- 43.20A.605 Authority to administer oaths and issue subpoenas—Provisions governing subpoenas.
- 43.20A.685 State council on aging—Membership—Terms—Vacancies—Chairperson—Secretary—Compensation of legislative members.
- 43.20A.710 Investigation of conviction records or pending charges of state employees and individual providers.
- 43.20A.725 Telecommunications devices for the hearing and speech impaired—Program for provision of services and equipment—Telecommunications relay service excise tax—Rules.
- 43.20A.860 Repealed.
- 43.20A.865 Secretary to enter into agreements with health care authority—Division of responsibilities.
- 43.20A.875 Employee incentive program pilot—WorkFirst program.

43.20A.365 Recodified as RCW 74.09.653. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.20A.605 Authority to administer oaths and issue subpoenas—Provisions governing subpoenas. (1) The secretary or a designee shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before him or her together with all books, memoranda, papers, and other documents, articles or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation.

(2) Subpoenas issued in adjudicative proceedings are governed by RCW 34.05.588(1).

(3) Subpoenas issued in the conduct of investigations required or authorized by other statutory provisions or necessary in the enforcement of other statutory provisions shall be governed by RCW 34.05.588(2).

(4) When a judicially approved subpoena is required by law, the secretary or designee may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or in the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

(a) State that an order is sought under this section;

(b) Adequately specify the documents, records, evidence, or testimony; and

(c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(5) When an application under subsection (4) of this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. When a judicially approved subpoena is required by law, an order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(6) The secretary or designee may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2011 1st sp.s. c 42 § 23; 2009 c 549 § 5078; 1989 c 175 § 97; 1983 1st ex.s. c 41 § 21; 1979 c 141 § 47; 1967 ex.s. c 102 § 2. Formerly RCW 43.20.015.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Additional notes found at www.leg.wa.gov

43.20A.685 State council on aging—Membership—Terms—Vacancies—Chairperson—Secretary—Compensation of legislative members. (1) Members of the council shall be appointed to terms of three years, except in the case of a vacancy, in which event appointment shall be for the remainder of the unexpired term for which the vacancy occurs. No member of the council may serve more than two consecutive three-year terms. Each area agency on aging advisory council shall appoint one member from its state-designated planning and service area. The governor shall appoint one additional member from names submitted by the association of Washington cities and one additional member from names submitted by the Washington state association of counties. In addition, the governor may appoint not more than five at large members, in order to ensure that rural areas (those areas outside of a standard metropolitan statistical area), minority populations, and those individuals with special skills which could assist the state council are represented. The members of the state council on aging shall elect, at the council's initial meeting and at the council's first meeting

each year, one member to serve as chairperson of the council and another member to serve as secretary of the council.

(2) The speaker of the house of representatives and the president of the senate shall each appoint two nonvoting members to the council; one from each of the two largest caucuses in each house. The terms of the members so appointed shall be for approximately two years and the terms shall expire before the first day of the legislative session in odd-numbered years. They shall be compensated by their respective houses as provided under RCW 44.04.120, as now or hereafter amended.

(3) With the exception of the members from the Washington state association of cities, the Washington state association of counties, and the nonvoting legislative members, all members of the council shall be at least fifty-five years old. [2011 1st sp.s. c 21 § 31; 1981 c 151 § 2.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Additional notes found at www.leg.wa.gov

43.20A.710 Investigation of conviction records or pending charges of state employees and individual providers. (1) The secretary shall investigate the conviction records, pending charges and disciplinary board final decisions of:

(a) Any current employee or applicant seeking or being considered for any position with the department who will or may have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities. This includes, but is not limited to, positions conducting comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(b) Individual providers who are paid by the state and providers who are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW; and

(c) Individuals or businesses or organizations for the care, supervision, case management, or treatment of children, persons with developmental disabilities, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

(2) The secretary shall require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation as provided in RCW 43.43.837. Unless otherwise authorized by law, the secretary shall use the information solely for the purpose of determining the character, suitability, and competence of the applicant.

(3) Except as provided in subsection (4) of this section, an individual provider or home care agency provider who has resided in the state less than three years before applying for employment involving unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must be fingerprinted for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of

investigation. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110. However, this subsection does not supersede *RCW 74.15.030(2)(b).

(4) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 1, 2014, are subject to background checks under RCW 74.39A.055, except that the department may require a background check at any time under RCW 43.43.837. For the purposes of this subsection, "background check" includes, but is not limited to, a fingerprint check submitted for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation.

(5) An individual provider or home care agency provider hired to provide in-home care for and having unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must have no conviction for a disqualifying crime under RCW 43.43.830 and 43.43.842. An individual or home care agency provider must also have no conviction for a crime relating to drugs as defined in RCW 43.43.830. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110.

(6) The secretary shall provide the results of the state background check on long-term care workers, including individual providers, to the persons hiring them or to their legal guardians, if any, for their determination of the character, suitability, and competence of the applicants. If the person elects to hire or retain an individual provider after receiving notice from the department that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, then the secretary shall deny payment for any subsequent services rendered by the disqualified individual provider.

(7) Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose. [2011 1st sp.s. c 31 § 16; 2011 c 253 § 1; 2009 c 580 § 5; 2001 c 296 § 5; 2000 c 87 § 2; 1999 c 336 § 7; 1997 c 392 § 525; 1993 c 210 § 1; 1989 c 334 § 13; 1986 c 269 § 1.]

***Reviser's note:** RCW 74.15.030(2)(b) was amended by 2007 c 387 § 5, changing the scope of the subsection.

Intent—2001 c 296: See note following RCW 9.96A.060.

Finding—Intent—1999 c 336: See note following RCW 74.39.007.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Children or vulnerable adults: RCW 43.43.830 through 43.43.842.

Employees with unsupervised access to children—Rules for background investigation: RCW 41.06.475.

State hospitals: RCW 72.23.035.

Additional notes found at www.leg.wa.gov

43.20A.725 Telecommunications devices for the hearing and speech impaired—Program for provision of

services and equipment—Telecommunications relay service excise tax—Rules. (1) The department, through the sole authority of the office or its successor organization, shall maintain a program whereby an individual of school age or older who possesses a hearing or speech impairment is provided with telecommunications equipment, software, and/or peripheral devices, digital or otherwise, that is determined by the office to be necessary for such a person to access and use telecommunications transmission services effectively.

(2) The department, through the sole authority of the office or its successor organization, shall maintain a program where telecommunications relay services of a human or electronic nature will be provided to connect hearing impaired, deaf-blind, or speech impaired persons with persons who do not have a hearing or speech impairment. Such telecommunications relay services shall provide the ability for an individual who has a hearing or speech impairment to engage in voice, tactile, or visual communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech impairment to communicate using voice or visual communication services by wire or radio subject to subsection (4)(b) of this section.

(3) The telecommunications relay service and equipment distribution program may operate in such a manner as to provide communications transmission opportunities that are capable of incorporating new technologies that have demonstrated benefits consistent with the intent of this chapter and are in the best interests of the citizens of this state.

(4) The office shall administer and control the award of money to all parties incurring costs in implementing and maintaining telecommunications services, programs, equipment, and technical support services according to this section. The relay service contract shall be awarded to an individual company registered as a telecommunications company by the utilities and transportation commission, to a group of registered telecommunications companies, or to any other company or organization determined by the office as qualified to provide relay services, contingent upon that company or organization being approved as a registered telecommunications company prior to final contract approval. The relay system providers and telecommunications equipment vendors shall be selected on the basis of cost-effectiveness and utility to the greatest extent possible under the program and technical specifications established by the office.

(a) To the extent funds are available under the then-current rate and not otherwise held in reserve or required for other purposes authorized by this chapter, the office may award contracts for communications and related services and equipment for hearing impaired or speech impaired individuals accessing or receiving services provided by, or contracted for, the department to meet access obligations under Title 2 of the federal Americans with disabilities act or related federal regulations.

(b) The office shall perform its duties under this section with the goal of achieving functional equivalency of access to and use of telecommunications services similar to the enjoyment of access to and use of such services experienced by an individual who does not have a hearing or speech impairment only to the extent that funds are available under the then-current

rate and not otherwise held in reserve or required for other purposes authorized by this chapter.

(5) The program shall be funded by a telecommunications relay service (TRS) excise tax applied to each switched access line provided by the local exchange companies. The office shall determine, in consultation with the office's program advisory committee, the budget needed to fund the program on an annual basis, including both operational costs and a reasonable amount for capital improvements such as equipment upgrade and replacement. The budget proposed by the office, together with documentation and supporting materials, shall be submitted to the office of financial management for review and approval. The approved budget shall be given by the department in an annual budget to the department of revenue no later than March 1st prior to the beginning of the fiscal year. The department of revenue shall then determine the amount of telecommunications relay service excise tax to be placed on each switched access line and shall inform local exchange companies and the utilities and transportation commission of this amount no later than May 1st. The department of revenue shall determine the amount of telecommunications relay service excise tax to be collected in the following fiscal year by dividing the total of the program budget, as submitted by the office, by the total number of switched access lines in the prior calendar year, as reported to the department of revenue under chapter 82.14B RCW, and shall not exercise any further oversight of the program under this subsection other than administering the collection of the telecommunications relay service excise tax as provided in RCW 82.72.010 through 82.72.090. The telecommunications relay service excise tax shall not exceed nineteen cents per month per access line. The telecommunications relay service excise tax shall be separately identified on each ratepayer's bill with the following statement: "Funds federal ADA requirement." All proceeds from the telecommunications relay service excise tax shall be put into a fund to be administered by the office through the department. During the 2009-2011 and 2011-2013 fiscal biennia, the funds may also be used to provide individualized employment services and employment-related counseling to people with disabilities, and technical assistance to employers about the employment of people with disabilities. "Switched access line" has the meaning provided in RCW 82.14B.020.

(6) The telecommunications relay service program and equipment vendors shall provide services and equipment consistent with the requirements of federal law for the operation of both interstate and intrastate telecommunications services for the hearing impaired or speech impaired. The department and the utilities and transportation commission shall be responsible for ensuring compliance with federal requirements and shall provide timely notice to the legislature of any legislation that may be required to accomplish compliance.

(7) The department shall adopt rules establishing eligibility criteria, ownership obligations, financial contributions, and a program for distribution to individuals requesting and receiving such telecommunications devices distributed by the office, and other rules necessary to administer programs and services consistent with this chapter. [2011 1st sp.s. c 50 § 944; 2010 1st sp.s. c 37 § 921; 2004 c 254 § 1; 2001 c 210 §

2; 1998 c 245 § 59; 1993 c 425 § 1; 1992 c 144 § 3; 1990 c 89 § 3; 1987 c 304 § 3.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Responsibility for collection of tax—2004 c 254: "(1) The department of revenue is responsible for the administration and collection of telephone program excise taxes as provided in this act only with regard to telephone program excise taxes that are imposed on switched access lines for any time period occurring on or after July 1, 2004.

(2) The department of social and health services is responsible for the administration and collection of telephone program excise taxes as provided in this act only with regard to telephone program excise taxes that are imposed on switched access lines for the current year and the four preceding years which occurred prior to July 1, 2004." [2004 c 254 § 13.]

Implementation—2004 c 254: "The secretary of the department of social and health services and the director of the department of revenue may take the necessary steps to ensure that this act is implemented on its effective date." [2004 c 254 § 15.]

Effective date—2004 c 254: See note following RCW 82.72.010.

Legislative findings—Severability—1992 c 144: See notes following RCW 43.20A.720.

Legislative finding—1990 c 89: See note following RCW 43.20A.720.

Additional notes found at www.leg.wa.gov

43.20A.860 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.20A.865 Secretary to enter into agreements with health care authority—Division of responsibilities. The secretary shall enter into agreements with the director of the health care authority, in his or her capacity as the director of the designated single state agency to administer medical services programs under Titles XIX and XXI of the social security act, to establish the division of responsibilities between the agencies with respect to mental health, chemical dependency, and long-term care services, including services for people with developmental disabilities. Except to the extent expressly authorized in the omnibus operating budget or other legislative act and where necessary to improve coordination of care for individual clients, nothing in this section or in section 116, chapter 15, Laws of 2011 1st sp. sess. shall be construed as authorizing the secretary or the director to transfer funds appropriated to one agency or program in the omnibus operating budget to another agency or program. [2011 1st sp.s. c 15 § 123.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

43.20A.875 Employee incentive program pilot—WorkFirst program. No later than January 1, 2012, the department shall establish an employee incentive program pilot for those employees who work directly with participants in the WorkFirst program. The pilot shall provide for eight hours of paid annual leave per year, in addition to the annual leave the employee normally accrues, for those employees who assist participants in meeting certain outcomes to be established by the department. The outcomes established must be of significance for the participant and can include achieving unsubsidized employment or the removal of a significant barrier to unsubsidized employment. The depart-

ment shall report to the legislature by January 1, 2013, on the implementation of the pilot project, including how many employees received paid annual leave, what outcomes were achieved, and the savings associated with the achievement of the outcomes. [2011 1st sp.s. c 42 § 27.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Chapter 43.21A RCW

DEPARTMENT OF ECOLOGY

Sections

- 43.21A.660 Freshwater aquatic weeds management program.
- 43.21A.667 Freshwater aquatic algae control account—Freshwater aquatic algae control program—Reports to the legislature (*as amended by 2011 c 5*).
- 43.21A.667 Aquatic algae control account—Freshwater and saltwater aquatic algae control program—Report to the legislature—Definition (*as amended by 2011 c 169*).
- 43.21A.667 Freshwater aquatic algae control account—Freshwater aquatic algae control program—Reports to the legislature (*as amended by 2011 c 171*).

43.21A.660 Freshwater aquatic weeds management program. Funds in the freshwater aquatic weeds account may be appropriated to the department of ecology to develop a freshwater aquatic weeds management program. Funds shall be expended as follows:

(1) No less than two-thirds of the appropriated funds shall be issued as grants to (a) cities, counties, tribes, special purpose districts, and state agencies to prevent, remove, reduce, or manage excessive freshwater aquatic weeds; (b) fund demonstration or pilot projects consistent with the purposes of this section; and (c) fund hydrilla eradication activities in waters of the state. Except for hydrilla eradication activities, such grants shall only be issued for lakes, rivers, or streams with a public boat launching ramp or which are designated by the department of fish and wildlife for fly-fishing. The department shall give preference to projects having matching funds or in-kind services;

(2) No more than one-third of the appropriated funds shall be expended to:

(a) Develop public education programs relating to preventing the propagation and spread of freshwater aquatic weeds; and

(b) Provide technical assistance to local governments and citizen groups; and

(3) During the 2009-2011 fiscal biennium, the legislature may transfer from the freshwater aquatic weeds account to the state general fund such amounts as reflect the excess fund balance of the account. [2011 c 5 § 907; 1999 c 251 § 1; 1996 c 190 § 1; 1991 c 302 § 4.]

Effective date—2011 c 5: See note following RCW 43.79.487.

Findings—Effective date—1991 c 302: See notes following RCW 43.21A.650.

43.21A.667 Freshwater aquatic algae control account—Freshwater aquatic algae control program—Reports to the legislature (*as amended by 2011 c 5*). (1) The freshwater aquatic algae control account is created in the state treasury. Moneys directed to the account from RCW ((88-02-050)) 88.02.560 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the freshwater aquatic algae control account may be appropriated to the department to develop a freshwater aquatic algae control program. Funds must be expended as follows:

(a) As grants to cities, counties, tribes, special purpose districts, and state agencies to manage excessive freshwater algae, with priority for the treatment of lakes in which harmful algal blooms have occurred within the past three years; and during the 2009-2011 fiscal biennium to provide grants for sea lettuce research and removal to assist Puget Sound communities that are impacted by hyperblooms of sea lettuce; ~~((and))~~

(b) To provide technical assistance to applicants and the public about aquatic algae control; and

(c) During the 2009-2011 fiscal biennium, the legislature may transfer from the freshwater aquatic algae control account to the state general fund such amounts as reflect the excess fund balance of the account.

(3) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007. [2011 c 5 § 908; 2009 c 564 § 933; 2005 c 464 § 4.]

Effective date—2011 c 5: See note following RCW 43.79.487.

43.21A.667 Aquatic algae control account—Freshwater and saltwater aquatic algae control program—Report to the legislature—Definition (as amended by 2011 c 169). (1) The ~~((freshwater))~~ aquatic algae control account is created in the state treasury. Moneys directed to the account from RCW ~~((88.02.050))~~ 88.02.640 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the ~~((freshwater))~~ aquatic algae control account may be appropriated to the department to develop a freshwater and saltwater aquatic algae control program and may be used to establish contingency funds for emergent issues. Funds must be expended as follows:

(a) As grants to cities, counties, tribes, special purpose districts, and state agencies: (i) To manage excessive freshwater and saltwater nuisance algae, with priority for the treatment of lakes in which harmful algal blooms have occurred within the past three years; and ((during the 2009-2011 fiscal biennium to provide grants)) (ii) for ((sea lettuce research)) freshwater and saltwater nuisance algae monitoring and removal ((to assist Puget Sound communities that are impacted by hyperblooms of sea lettuce)); and

(b) To provide technical assistance to applicants and the public about aquatic algae control.

(3) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007.

(4) For the purposes of this section, "saltwater nuisance algae" means native invasive algae (sea lettuce), nonnative invasive algae, and algae producing harmful toxins. [2011 c 169 § 2; 2009 c 564 § 933; 2005 c 464 § 4.]

43.21A.667 Freshwater aquatic algae control account—Freshwater aquatic algae control program—Reports to the legislature (as amended by 2011 c 171). (1) The freshwater aquatic algae control account is created in the state treasury. Moneys directed to the account from RCW ~~((88.02.050))~~ 88.02.640 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the freshwater aquatic algae control account may be appropriated to the department to develop a freshwater aquatic algae control program. Funds must be expended as follows:

(a) As grants to cities, counties, tribes, special purpose districts, and state agencies to manage excessive freshwater algae, with priority for the treatment of lakes in which harmful algal blooms have occurred within the past three years; and during the 2009-2011 fiscal biennium to provide grants for sea lettuce research and removal to assist Puget Sound communities that are impacted by hyperblooms of sea lettuce; and

(b) To provide technical assistance to applicants and the public about aquatic algae control.

(3) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007. [2011 c 171 § 7; 2009 c 564 § 933; 2005 c 464 § 4.]

Reviser's note: RCW 43.21A.667 was amended three times during the 2011 legislative session, each without reference to the other. For rule of con-

struction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—2009 c 564: See note following RCW 2.68.020.

Findings—Intent—2005 c 464: See note following RCW 88.02.560.

Chapter 43.21C RCW

STATE ENVIRONMENTAL POLICY

Sections

43.21C.0301 Decisions not subject to RCW 43.21C.030.

43.21C.037 Application of RCW 43.21C.030(2)(c) to forest practices.

43.21C.0301 Decisions not subject to RCW 43.21C.030. (1) Decisions made under RCW 36.70A.720 pertaining to work plans, as defined in RCW 36.70A.703, are not subject to the requirements of RCW 43.21C.030(2)(c).

(2) Decisions made by a county under RCW 36.70A.710 on whether to participate in the voluntary stewardship program established by RCW 36.70A.705 are not subject to the requirements of RCW 43.21C.030(2)(c). [2011 c 360 § 19.]

Purpose—Intent—Conflict with federal requirements—2011 c 360: See RCW 36.70A.700 and 36.70A.904.

43.21C.037 Application of RCW 43.21C.030(2)(c) to forest practices. (1) Decisions pertaining to applications for Class I, II, and III forest practices, as defined by rule of the forest practices board under RCW 76.09.050, are not subject to the requirements of RCW 43.21C.030(2)(c) as now or hereafter amended.

(2) When the applicable county, city, or town requires a license in connection with any proposal involving forest practices:

(a) On forest lands that are being converted to another use; or

(b) On lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, then the local government, rather than the department of natural resources, is responsible for any detailed statement required under RCW 43.21C.030(2)(c).

(3) Those forest practices determined by rule of the forest practices board to have a potential for a substantial impact on the environment, and thus to be Class IV practices, require an evaluation by the department of natural resources as to whether or not a detailed statement must be prepared pursuant to this chapter. The evaluation shall be made within ten days from the date the department receives the application. A Class IV forest practice application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. This section shall not be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an

action regarding a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. [2011 c 207 § 3; 1997 c 173 § 6; 1983 c 117 § 2; 1981 c 290 § 1.]

Chapter 43.21H RCW STATE ECONOMIC POLICY

Sections

43.21H.020 State and local authorities to insure that economic impacts and values be given appropriate consideration in rule-making process.

43.21H.020 State and local authorities to insure that economic impacts and values be given appropriate consideration in rule-making process. The legislature finds that agency and local government decisions can have negative economic consequences for businesses, particularly small businesses, as well as for employees of those businesses. All state agencies and local government entities with rule-making authority under state law or local ordinance must adopt methods and procedures which will insure that economic impacts and values will be given appropriate consideration in the rule-making process along with environmental, social, health, and safety considerations. [2011 c 249 § 1; 1975-'76 2nd ex.s. c 117 § 2.]

Chapter 43.22 RCW DEPARTMENT OF LABOR AND INDUSTRIES

Sections

43.22.290 Reports by employers.
43.22.435 Altering a mobile or manufactured home—Permit—Penalties—Appeals—Notice of correction.

43.22.290 Reports by employers. Every owner, operator, or manager of a factory, workshop, mill, mine, or other establishment where labor is employed, shall make to the department, upon blanks furnished by it, such reports and returns as the department may require, for the purpose of compiling such labor statistics as are authorized by this chapter, and the owner or business manager shall make such reports and returns within the time prescribed therefor by the director, and shall certify to the correctness thereof.

In the reports of the department no use shall be made of the names of individuals, firms, or corporations supplying the information called for by this section, such information being deemed confidential, and not for the purpose of disclosing personal affairs, and any officer, agent, or employee of the department violating this provision shall be fined a sum not exceeding five hundred dollars, or be imprisoned for up to three hundred sixty-four days. [2011 c 96 § 28; 1965 c 8 § 43.22.290. Prior: 1901 c 74 § 3; RRS § 7588.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

43.22.435 Altering a mobile or manufactured home—Permit—Penalties—Appeals—Notice of correction. (1)(a) In addition to or in lieu of any other penalty applicable under this chapter, and except as provided in (b) of this subsection, the department may assess a civil penalty of not more than one thousand dollars against a contractor, firm,

partnership, or corporation, that fails to obtain a permit before altering a mobile or manufactured home as required under this chapter or rules adopted under this chapter. Each day on which a violation occurs constitutes a separate violation. However, the cumulative penalty for the same occurrence may not exceed five thousand dollars.

(b) The department must adopt a schedule of civil penalties giving due consideration to the appropriateness of the penalty with respect to the gravity of the violation and the history of previous violations. Penalties for subsequent violations, not constituting the same occurrence, committed within two years of a prior violation by the same party or entity, or by an individual who was a principal or officer of the same entity, must be double the amount of the penalty for the prior violation or one thousand dollars, whichever is greater.

(2)(a) The department may issue a notice of correction before issuing a civil penalty assessment. The notice must include:

- (i) A description of the violation;
- (ii) A statement of what is required to correct the violation;
- (iii) The date by which the department requires correction to be achieved; and
- (iv) Notice of the individual or department office that must be contacted to obtain a permit or other compliance information.

(b) A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.

(c) If the department issues a notice of correction, it shall not issue a civil penalty for the violation identified in the notice of correction unless the responsible person fails to comply with the notice.

(3)(a) The department must issue written notices of civil penalties imposed under this section, with the reasons for the penalty, using a method by which the mailing can be tracked or the delivery can be confirmed to the last known address of the party named in the notice.

(b) If a party desires to contest a notice of civil penalty issued under this section, the party must file a notice of appeal with the department within twenty days of the department's mailing of the notice of civil penalty. An administrative law judge of the office of administrative hearings will hear and determine the appeal. Appeal proceedings must be conducted pursuant to chapter 34.05 RCW. An appeal of the administrative law judge's determination or order shall be to the superior court. The superior court's decision is subject only to discretionary review under the rules of appellate procedure. [2011 c 301 § 10; 2002 c 268 § 4.]

Purpose—Finding—Effective dates—2002 c 268: See notes following RCW 43.22.434.

Chapter 43.22A RCW MOBILE AND MANUFACTURED HOME INSTALLATION

Sections

43.22A.080 Installer certification—Revocation.
43.22A.100 Manufactured home installation training account.
43.22A.130 Certified installer required on-site—Infraction—Notice.

43.22A.080 Installer certification—Revocation. (1)

The department may revoke a certificate of manufactured home installation upon the following grounds:

- (a) The certificate was obtained through error or fraud;
- (b) The holder of the certificate is judged to be incompetent as a result of multiple infractions of the state installation code, *WAC 296-150B-200 through 296-150B-255; or
- (c) The holder has violated a provision of this chapter or a rule adopted to implement this chapter.

(2) Before a certificate of manufactured home installation is revoked, the holder must be given written notice of the department's intention to revoke the certificate, sent using a method by which the mailing can be tracked or the delivery can be confirmed to the holder's last known address. The notice shall enumerate the allegations against the holder, and shall give the holder the opportunity to request a hearing. At the hearing, the department and the holder may produce witnesses and give testimony. The hearing shall be conducted in accordance with the provisions of chapter 34.05 RCW. [2011 c 301 § 11; 1994 c 284 § 21. Formerly RCW 43.63B.050.]

*Reviser's note: Chapter 296-150B WAC was repealed in 1996.

43.22A.100 Manufactured home installation training account. The manufactured home installation training account is created in the state treasury. All receipts collected under this chapter and RCW 46.17.150 and any legislative appropriations for manufactured home installation training shall be deposited into the account. Moneys in the account may only be spent after appropriation. Expenditures from the account may only be used for the purposes of this chapter. Unexpended and unencumbered moneys that remain in the account at the end of the fiscal year do not revert to the state general fund but remain in the account, separately accounted for, as a contingency reserve. [2011 c 158 § 3; 1994 c 284 § 23. Formerly RCW 43.63B.080.]

Transfer of residual funds to manufactured home installation training account—2011 c 158: "Any residual balance of funds remaining in the manufactured housing account must be transferred to the manufactured home installation training account created in RCW 43.22A.100. The treasurer shall make the transfer after being notified by the office of financial management that it has completed the financial statement for fiscal year 2011, and no later than December 31, 2011." [2011 c 158 § 8.]

43.22A.130 Certified installer required on-site—Infraction—Notice. An authorized representative of the department may issue a notice of infraction if the person supervising the manufactured home installation work fails to produce evidence of having a certificate issued by the department in accordance with this chapter. A notice of infraction issued under this chapter shall be personally served on or sent using a method by which the mailing can be tracked or the delivery can be confirmed to the person named in the notice by the authorized representative. [2011 c 301 § 12; 1994 c 284 § 25. Formerly RCW 43.63B.100.]

Chapter 43.23 RCW**DEPARTMENT OF AGRICULTURE**

Sections

- 43.23.115 Gifts, grants, bequests, or contributions.
- 43.23.230 Agricultural local fund—Animal disease traceability account.

43.23.115 Gifts, grants, bequests, or contributions.

The director of the department may accept, expend, and retain gifts, grants, bequests, or contributions from public or private sources to carry out the purposes and programs of the department. [2011 c 245 § 1.]

43.23.230 Agricultural local fund—Animal disease traceability account. (1) The agricultural local fund is hereby established in the custody of the state treasurer. The fund shall consist of such money as is directed by law for deposit in the fund, and such other money not subject to appropriation that the department authorizes to be deposited in the fund. Any money deposited in the fund, the use of which has been restricted by law, may only be expended in accordance with those restrictions. The department may make disbursements from the fund. The fund is not subject to legislative appropriation.

(2) There is created within the agricultural local fund the animal disease traceability account which must be used to account for the costs associated with the implementation of chapter 16.36 RCW. [2011 c 204 § 7; 1988 c 254 § 1.]

Chapter 43.24 RCW**DEPARTMENT OF LICENSING**

Sections

- 43.24.150 Business and professions account.

43.24.150 Business and professions account. (1) The business and professions account is created in the state treasury. All receipts from business or professional licenses, registrations, certifications, renewals, examinations, or civil penalties assessed and collected by the department from the following chapters must be deposited into the account:

- (a) Chapter 18.11 RCW, auctioneers;
- (b) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;
- (c) Chapter 18.145 RCW, court reporters;
- (d) Chapter 18.165 RCW, private investigators;
- (e) Chapter 18.170 RCW, security guards;
- (f) Chapter 18.185 RCW, bail bond agents;
- (g) Chapter 18.280 RCW, home inspectors;
- (h) Chapter 19.16 RCW, collection agencies;
- (i) Chapter 19.31 RCW, employment agencies;
- (j) Chapter 19.105 RCW, camping resorts;
- (k) Chapter 19.138 RCW, sellers of travel;
- (l) Chapter 42.44 RCW, notaries public;
- (m) Chapter 64.36 RCW, timeshares;
- (n) Chapter 67.08 RCW, boxing, martial arts, and wrestling;
- (o) Chapter 18.300 RCW, body art, body piercing, and tattooing;
- (p) Chapter 79A.60 RCW, whitewater river outfitters; and
- (q) Chapter 19.158 RCW, commercial telephone solicitation.

Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for expenses incurred in carrying out these business and professions licensing activities of the department. Any residue in

the account must be accumulated and may not revert to the general fund at the end of the biennium.

(2) The director must biennially prepare a budget request based on the anticipated costs of administering the business and professions licensing activities listed in subsection (1) of this section, which must include the estimated income from these business and professions fees. [2011 c 298 § 25. Prior: 2009 c 429 § 4; 2009 c 412 § 21; 2009 c 370 § 19; 2008 c 119 § 22; 2005 c 25 § 1.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Effective date—2009 c 412 §§ 1-21: See RCW 18.300.901.

Short title—Implementation—2009 c 412: See RCW 18.300.900 and 18.300.902.

Effective date—2009 c 370 §§ 17 and 19: See note following RCW 18.96.210.

Finding—2009 c 370: See note following RCW 18.96.010.

Effective date—2005 c 25: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 25 § 5.]

Chapter 43.30 RCW

DEPARTMENT OF NATURAL RESOURCES

Sections

43.30.215	Powers and duties of board.
43.30.291	Board on geographic names—Created—Duties.
43.30.292	Board on geographic names—Committee on geographic names—Committee membership.
43.30.293	Committee on geographic names—Meetings—Rules—Reports and recommendations.
43.30.294	Board on geographic names—Adoption of names—Publication in the Washington State Register—Official names.
43.30.295	Board on geographic names—Administrative services—Custodian of records.
43.30.385	Park land trust revolving fund.
43.30.545	Washington conservation corps.

43.30.215 Powers and duties of board. The board shall:

(1) Perform duties relating to appraisal, appeal, approval, and hearing functions as provided by law;

(2) Establish policies to ensure that the acquisition, management, and disposition of all lands and resources within the department's jurisdiction are based on sound principles designed to achieve the maximum effective development and use of such lands and resources consistent with laws applicable thereto;

(3) Constitute the board of appraisers provided for in Article 16, section 2 of the state Constitution;

(4) Constitute the commission on harbor lines provided for in Article 15, section 1 of the state Constitution as amended;

(5) Constitute the board on geographic names as provided for in RCW 43.30.291 through 43.30.295; and

(6) Adopt and enforce rules as may be deemed necessary and proper for carrying out the powers, duties, and functions imposed upon it by this chapter. [2011 c 355 § 1; 2003 c 334 § 112; 1988 c 128 § 10; 1986 c 227 § 2; 1975-'76 2nd ex.s. c 34 § 107; 1965 c 8 § 43.30.150. Prior: 1957 c 38 § 15. Formerly RCW 43.30.150.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

43.30.291 Board on geographic names—Created—Duties. The board on geographic names is created to establish a procedure for the retention and formal recognition of existing geographic names; to standardize the procedures for naming or renaming geographical features within the state of Washington; to identify one body as the responsible agency to coordinate this important activity between local, state, and federal agencies; to identify the responsible agency for the purpose of serving the public interest; to avoid the duplication of names for similar features whenever possible; and as far as possible, to retain the significance, spelling, and color of names associated with the early history of Washington.

The board on geographic names has the following duties:

(1) Establish the official names for the lakes, mountains, streams, places, towns, and other geographic features within the state and the spellings thereof except when a name is specified by law. For the purposes of this subsection, geographic features do not include human-made features or administrative areas such as parks, game reserves, and dams, but do include human-made lakes;

(2) Assign names to lakes, mountains, streams, places, towns, and other geographic features in the state for which no generally accepted name has been in use;

(3) Cooperate with county commissions, state departments, agencies, the state legislature, and the United States board on geographic names to establish, change, or determine the appropriate names of lakes, mountains, streams, places, towns, and other geographic features for the purposes of eliminating, as far as possible, duplications of place names within the state;

(4) Serve as a state of Washington liaison with the United States board on geographic names;

(5) Periodically issue a list of names approved by the board on geographic names; and

(6) Establish policies to carry out the purposes of this section and RCW 43.30.292 through 43.30.294. [2011 c 355 § 2.]

43.30.292 Board on geographic names—Committee on geographic names—Committee membership. (1) The board on geographic names shall establish a committee on geographic names to assist the board in performing its duties and to provide broader contextual, public, and tribal participation in naming geographic features in the state. The committee shall report to the board on geographic names and shall consist of:

(a) The commissioner or representative;

(b) The state librarian or the librarian's designee;

(c) The director of the department of archaeology and historic preservation or the director's designee;

(d) A representative of the Washington state tribes, to be appointed by the commissioner from nominations made by Washington's recognized tribal governments. The tribal representative serves a three-year term; and

(e) Three members from the public to be appointed by the commissioner. Initial appointments of the public members appointed under this subsection shall be as follows: One member for a one-year term, one member for a two-year term, and one member for a three-year term. Thereafter, each public member shall be appointed for a three-year term.

(2) Each member of the committee shall continue in office until a successor is appointed. The commissioner shall serve as chair of the board. [2011 c 355 § 3.]

43.30.293 Committee on geographic names—Meetings—Rules—Reports and recommendations. (1) The committee on geographic names shall hold at least two meetings each year, and may hold special meetings as called by the chair or a majority of the members of the committee. All meetings must be open to the public.

(a) Notice of all committee meetings shall be as provided in RCW 42.30.080. The notice must include the names to be considered by the committee and the names to be adopted by the board on geographic names.

(b) Four committee members shall constitute a quorum.

(2) The committee shall establish rules for the conduct of its affairs and to carry out the duties of this section.

(3) The committee shall cooperate with the United States board on geographic names.

(4) The committee shall make reports and recommendations to the board on geographic names following each meeting of the committee. Recommendations regarding adoption of names may only be made following consideration at two committee meetings.

(5) In considering the names and spellings of geographic place names, the committee's recommendations to the board on geographic names may only be made after careful deliberation of all available information relating to such names, including the recommendations of the United States board on geographic names. [2011 c 355 § 4.]

43.30.294 Board on geographic names—Adoption of names—Publication in the Washington State Register—Official names. (1) The board on geographic names shall consider the recommendations made by the committee on geographic names for adoption of names. The board on geographic names must either adopt the name as recommended, or refer the matter back to the committee on geographic names for further review.

(2) All geographic names adopted by the board on geographic names shall be published in the Washington State Register.

(3) Whenever the board on geographic names has given a name to any lake, stream, place, or other geographic feature within the state, the name must be used in all maps, records, documents, and other publications issued by the state or any of its departments and political subdivisions, and that name is the official name of the geographic feature. [2011 c 355 § 5.]

43.30.295 Board on geographic names—Administrative services—Custodian of records. The department of natural resources shall provide secretarial and administrative services for the board on geographic names and shall serve as custodian of the records. [2011 c 355 § 6.]

43.30.385 Park land trust revolving fund. (1) The park land trust revolving fund is to be utilized by the department for the purpose of acquiring real property, including all reasonable costs associated with these acquisitions, as a replacement for the property transferred to the state parks and

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recreation commission, as directed by the legislature in order to maintain the land base of the affected trusts or under RCW 79.22.060 and to receive voluntary contributions for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department.

(2) In addition to the other purposes identified in this section, the park land trust revolving fund may be utilized by the department to hold funding for future acquisition of lands for the community forest trust program from willing sellers under RCW 79.155.040.

(3)(a) Proceeds from transfers of real property to the state parks and recreation commission or other proceeds identified from transfers of real property as directed by the legislature shall be deposited in the park land trust revolving fund.

(b) The proceeds from real property transferred or disposed under RCW 79.22.060 must be used solely to purchase replacement forest land, that must be actively managed as a working forest, within the same county as the property transferred or disposed.

(c) Disbursement from the park land trust revolving fund to acquire replacement property and for operating and maintaining public use and recreation facilities shall be on the authorization of the department. The proceeds from the recreation access pass account created in RCW 79A.80.090 must be solely used for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department.

(4) In order to maintain an effective expenditure and revenue control, the park land trust revolving fund is subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund.

(5) The department is authorized to solicit and receive voluntary contributions for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department. The department may seek voluntary contributions from individuals and organizations for this purpose. Voluntary contributions will be deposited into the park land trust revolving fund and used solely for the purpose of public use and recreation facilities operations and maintenance. Voluntary contributions are not considered a fee for use of these facilities. [2011 c 320 § 21; 2011 c 216 § 14; 2009 c 354 § 9; 2004 c 103 § 1; 2003 c 334 § 106; 2000 c 148 § 4; 1995 c 211 § 5. Formerly RCW 43.30.115.]

Reviser's note: This section was amended by 2011 c 216 § 14 and by 2011 c 320 § 21, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 320: See note following RCW 79A.80.005.

Findings—Intent—2011 c 320: See RCW 79A.80.005.

Finding—Intent—2009 c 354: See note following RCW 84.33.140.

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Intent—Effective date—Severability—1995 c 211: See notes following RCW 79A.05.070.

43.30.545 Washington conservation corps. The department shall cooperate, when appropriate, as a partner in the Washington conservation corps established in chapter 43.220 RCW. [2011 c 20 § 12.]

Findings—Intent—2011 c 20: See note following RCW 43.220.020.

Intent—Application—2011 c 20: See RCW 43.220.905.

Chapter 43.31 RCW
DEPARTMENT OF COMMERCE

Sections

43.31.086	Decodified.
43.31.422	Hanford area economic investment fund.
43.31.425	Hanford area economic investment fund advisory committee.

43.31.086 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.31.422 Hanford area economic investment fund. The Hanford area economic investment fund is established in the custody of the state treasurer. Moneys in the fund shall only be used for reasonable assistant attorney general costs in support of the committee or pursuant to the decisions of the committee created in RCW 43.31.425 for Hanford area revolving loan funds, Hanford area infrastructure projects, or other Hanford area economic development and diversification projects, but may not be used for government or non-profit organization operating expenses. Up to five percent of moneys in the fund may be used for program administration. For the purpose of this chapter "Hanford area" means Benton and Franklin counties. The director of commerce or the director's designee shall authorize disbursements from the fund with the advice of the committee created in RCW 43.31.425. The fund is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for disbursements. The legislature intends to establish similar economic investment funds for areas that develop low-level radioactive waste disposal facilities. [2011 1st sp.s. c 21 § 42; 2004 c 77 § 1; 1998 c 76 § 1; 1993 c 280 § 44; 1991 c 272 § 19.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Surcharge on waste generators: RCW 43.200.230, 43.200.233, and 43.200.235.

Additional notes found at www.leg.wa.gov

43.31.425 Hanford area economic investment fund advisory committee. The Hanford area economic investment fund advisory committee is hereby established to advise the director of the department of commerce.

(1) The committee shall have eleven members. The director of the department of commerce shall appoint the members, in consultation with Hanford area elected officials, subject to the following requirements:

(a) All members shall either reside or be employed within the Hanford area.

(b) The committee shall have a balanced membership representing one member each from the elected leadership of Benton county, Franklin county, the city of Richland, the city of Kennewick, the city of Pasco, a Hanford area port district, the labor community, and four members from the Hanford area business and financial community.

(c) Careful consideration shall be given to assure minority representation on the committee.

(2) Each member appointed by the director of the department of commerce shall serve a term of three years. A person

appointed to fill a vacancy of a member shall be appointed in a like manner and shall serve for only the unexpired term. A member is eligible for reappointment. A member may be removed by the director of the department of commerce for cause.

(3) The director of the department of commerce shall designate a member of the committee as its chairperson. The committee may elect such other officers as it deems appropriate. Six members of the committee constitute a quorum and six affirmative votes are necessary for the transaction of business or the exercise of any power or function of the committee.

(4) The members shall serve without compensation, but are entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties in accordance with RCW 43.03.050 and 43.03.060.

(5) Members shall not be liable to the state, to the fund, or to any other person as a result of their activities, whether ministerial or discretionary, as members except for willful dishonesty or intentional violations of law. The department may purchase liability insurance for members and may indemnify these persons against the claims of others. [2011 1st sp.s. c 21 § 41; 1998 c 76 § 2; 1991 c 272 § 20.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Additional notes found at www.leg.wa.gov

Chapter 43.33A RCW
STATE INVESTMENT BOARD

Sections

43.33A.100	Offices—Personnel—Officers—Compensation—Transfer of employees—Existing contracts and obligations.
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43.33A.100 Offices—Personnel—Officers—Compensation—Transfer of employees—Existing contracts and obligations. The state investment board shall maintain appropriate offices and employ such personnel as may be necessary to perform its duties. Employment by the investment board shall include but not be limited to an executive director, investment officers, and a confidential secretary, which positions are exempt from classified service under chapter 41.06 RCW. Employment of the executive director by the board shall be for a term of three years, and such employment shall be subject to confirmation of the state finance committee: PROVIDED, That nothing shall prevent the board from dismissing the director for cause before the expiration of the term nor shall anything prohibit the board, with the confirmation of the state finance committee, from employing the same individual as director in succeeding terms. Compensation levels for the executive director, a confidential secretary, and all investment officers, including the deputy director for investment management, employed by the investment board shall be established by the state investment board. The investment board is authorized to maintain a retention pool within the state investment board expense account under RCW 43.33A.160, from the earnings of the funds managed by the board, pursuant to a performance management and compensation program developed by the investment board, in order to address recruitment and retention problems and to reward performance. The compensation lev-

els and incentive compensation for investment officers shall be limited to the average of total compensation provided by state or other public funds of similar size, based upon a biennial survey conducted by the investment board, with review and comment by the joint legislative audit and review committee. However, in any fiscal year the incentive compensation granted by the investment board from the retention pool to investment officers pursuant to this section may not exceed thirty percent. Disbursements from the retention pool shall be from legislative appropriations and shall be on authorization of the board's executive director or the director's designee.

The investment board shall provide notice to the director of financial management and the chairs of the house of representatives and senate fiscal committees of proposed changes to the compensation levels for the positions. The notice shall be provided not less than sixty days prior to the effective date of the proposed changes.

As of July 1, 1981, all employees classified under chapter 41.06 RCW and engaged in duties assumed by the state investment board on July 1, 1981, are assigned to the state investment board. The transfer shall not diminish any rights granted these employees under chapter 41.06 RCW nor exempt the employees from any action which may occur thereafter in accordance with chapter 41.06 RCW.

All existing contracts and obligations pertaining to the functions transferred to the state investment board in chapter 3, Laws of 1981 shall remain in full force and effect, and shall be performed by the board. None of the transfers directed by chapter 3, Laws of 1981 shall affect the validity of any act performed by a state entity or by any official or employee thereof prior to July 1, 1981. [2011 1st sp.s. c 43 § 457; 2008 c 236 § 1; 2001 c 302 § 1; 1993 c 281 § 50; 1981 c 219 § 3; 1981 c 3 § 10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

Chapter 43.34 RCW CAPITOL COMMITTEE

Sections

43.34.080 Capitol campus design advisory committee—Generally.

43.34.080 Capitol campus design advisory committee—Generally. (1) The capitol campus design advisory committee is established as an advisory group to the capitol committee and the *director of general administration to review programs, planning, design, and landscaping of state capitol facilities and grounds and to make recommendations that will contribute to the attainment of architectural, aesthetic, functional, and environmental excellence in design and maintenance of capitol facilities on campus and located in neighboring communities.

(2) The advisory committee shall consist of the following persons who shall be appointed by and serve at the pleasure of the *director of general administration:

- (a) Two architects;
- (b) A landscape architect; and
- (c) An urban planner.

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The *director of general administration shall appoint the chair and vice chair and shall provide the staff and resources necessary for implementing this section. The advisory committee shall meet at least once every ninety days and at the call of the chair.

The members of the committee shall be reimbursed as provided in RCW 43.03.220 and 44.04.120.

(3) The advisory committee shall also consist of the secretary of state and two members of the house of representatives, one from each caucus, who shall be appointed by the speaker of the house of representatives, and two members of the senate, one from each caucus, who shall be appointed by the president of the senate.

(4) The advisory committee shall review plans and designs affecting state capitol facilities as they are developed. The advisory committee's review shall include:

(a) The process of solicitation and selection of appropriate professional design services including design-build proposals;

(b) Compliance with the capitol campus master plan and design concepts as adopted by the capitol committee;

(c) The design, siting, and grouping of state capitol facilities relative to the service needs of state government and the impact upon the local community's economy, environment, traffic patterns, and other factors;

(d) The relationship of overall state capitol facility planning to the respective comprehensive plans for long-range urban development of the cities of Olympia, Lacey, and Tumwater, and Thurston county; and

(e) Landscaping plans and designs, including planting proposals, street furniture, sculpture, monuments, and access to the capitol campus and buildings. [2011 1st sp.s. c 21 § 34; 1990 c 93 § 1.]

***Reviser's note:** The "director of general administration" was renamed the "director of enterprise services" by 2011 1st sp.s. c 43 § 108.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Chapter 43.41 RCW OFFICE OF FINANCIAL MANAGEMENT

Sections

43.41.110 Powers and duties of office of financial management.
43.41.113 Personnel policy and application of civil service laws—Human resources director.
43.41.160 State health care cost containment policies.
43.41.260 Monitoring enrollee level in basic health plan and medicaid caseload of children—Funding levels adjustment.
43.41.280 Recodified as RCW 43.19.760.
43.41.290 Recodified as RCW 43.19.763.
43.41.300 Recodified as RCW 43.19.766.
43.41.310 Recodified as RCW 43.19.769.
43.41.320 Recodified as RCW 43.19.772.
43.41.330 Recodified as RCW 43.19.775.
43.41.340 Recodified as RCW 43.19.778.
43.41.350 Recodified as RCW 43.19.781.
43.41.360 Recodified as RCW 43.19.784.
43.41.370 Loss prevention review team—Appointment—Duties.
43.41.380 Loss prevention review team—Final report—Use of report and testimony limited—Response report.
43.41.981 Transfer of certain powers, duties, functions, and assets of the department of personnel.

43.41.110 Powers and duties of office of financial management. The office of financial management shall:

(1) Provide technical assistance to the governor and the legislature in identifying needs and in planning to meet those needs through state programs and a plan for expenditures.

(2) Perform the comprehensive planning functions and processes necessary or advisable for state program planning and development, preparation of the budget, inter-departmental and inter-governmental coordination and cooperation, and determination of state capital improvement requirements.

(3) Provide assistance and coordination to state agencies and departments in their preparation of plans and programs.

(4) Provide general coordination and review of plans in functional areas of state government as may be necessary for receipt of federal or state funds.

(5) Participate with other states or subdivisions thereof in interstate planning.

(6) Encourage educational and research programs that further planning and provide administrative and technical services therefor.

(7) Carry out the provisions of RCW 43.62.010 through 43.62.050 relating to the state census.

(8) Be the official state participant in the federal-state cooperative program for local population estimates and as such certify all city and county special censuses to be considered in the allocation of state and federal revenues.

(9) Be the official state center for processing and dissemination of federal decennial or quinquennial census data in cooperation with other state agencies.

(10) Be the official state agency certifying annexations, incorporations, or disincorporations to the United States bureau of the census.

(11) Review all United States bureau of the census population estimates used for federal revenue sharing purposes and provide a liaison for local governments with the United States bureau of the census in adjusting or correcting revenue sharing population estimates.

(12) Provide fiscal notes depicting the expected fiscal impact of proposed legislation in accordance with chapter 43.88A RCW.

(13) Be the official state agency to estimate and manage the cash flow of all public funds as provided in chapter 43.88 RCW. To this end, the office shall adopt such rules as are necessary to manage the cash flow of public funds. [2011 1st sp.s. c 43 § 510; 2002 c 332 § 23; 1981 2nd ex.s. c 4 § 13; 1979 c 10 § 3. Prior: 1977 ex.s. c 110 § 4; 1977 ex.s. c 25 § 6; 1969 ex.s. c 239 § 11.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Effective date—2002 c 332: See notes following RCW 43.19.760.

Additional notes found at www.leg.wa.gov

43.41.113 Personnel policy and application of civil service laws—Human resources director. (1) The office of financial management shall direct and supervise the personnel policy and application of the civil service laws, chapter 41.06 RCW.

(2) The human resources director is created in the office of financial management. The human resources director shall be appointed by the governor, and shall serve at the pleasure of the governor. The director shall receive a salary in an amount fixed by the governor.

(3) The human resources director has the authority and shall perform the functions as prescribed in chapter 41.06 RCW, or as otherwise prescribed by law.

(4) The human resources director may delegate to any agency the authority to perform administrative and technical personnel activities if the agency requests such authority and the human resources director is satisfied that the agency has the personnel management capabilities to effectively perform the delegated activities. The human resources director shall prescribe standards and guidelines for the performance of delegated activities. If the human resources director determines that an agency is not performing delegated activities within the prescribed standards and guidelines, the director shall withdraw the authority from the agency to perform such activities. [2011 1st sp.s. c 43 § 430.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41.160 State health care cost containment policies.

(1) It is the purpose of this section to ensure implementation and coordination of chapter 70.14 RCW as well as other legislative and executive policies designed to contain the cost of health care that is purchased or provided by the state. In order to achieve that purpose, the director may:

(a) Establish within the health care authority a health care cost containment program in cooperation with all state agencies;

(b) Implement lawful health care cost containment policies that have been adopted by the legislature or the governor, including appropriation provisions;

(c) Coordinate the activities of all state agencies with respect to health care cost containment policies;

(d) Study and make recommendations on health care cost containment policies;

(e) Monitor and report on the implementation of health care cost containment policies;

(f) Appoint a health care cost containment technical advisory committee that represents state agencies that are involved in the direct purchase, funding, or provision of health care; and

(g) Engage in other activities necessary to achieve the purposes of this section.

(2) All state agencies shall cooperate with the director in carrying out the purpose of this section. [2011 1st sp.s. c 15 § 70; 1986 c 303 § 11.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Health care authority: Chapter 41.05 RCW.

43.41.260 Monitoring enrollee level in basic health plan and medicaid caseload of children—Funding levels adjustment. The health care authority and the office of financial management shall together monitor the enrollee level in the basic health plan and the medicaid caseload of children. The office of financial management shall adjust the funding levels by interagency reimbursement of funds between the basic health plan and medicaid and adjust the funding levels for the health care authority to maximize combined enrollment. [2011 1st sp.s. c 15 § 71; 2009 c 479 § 28; 1995 c 265 § 21.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2009 c 479: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

43.41.280 Recodified as RCW 43.19.760. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.41.290 Recodified as RCW 43.19.763. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.41.300 Recodified as RCW 43.19.766. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.41.310 Recodified as RCW 43.19.769. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.41.320 Recodified as RCW 43.19.772. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.41.330 Recodified as RCW 43.19.775. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.41.340 Recodified as RCW 43.19.778. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.41.350 Recodified as RCW 43.19.781. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.41.360 Recodified as RCW 43.19.784. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.41.370 Loss prevention review team—Appointment—Duties. (1) The director shall appoint a loss prevention review team when the death of a person, serious injury to a person, or other substantial loss is alleged or suspected to be caused at least in part by the actions of a state agency, unless the director in his or her discretion determines that the incident does not merit review. A loss prevention review team may also be appointed when any other substantial loss occurs as a result of agency policies, litigation or defense practices, or other management practices. When the director decides not to appoint a loss prevention review team he or she shall issue a statement of the reasons for the director's decision. The statement shall be made available on the department's web site. The director's decision pursuant to this section to appoint or not appoint a loss prevention review team shall not be admitted into evidence in a civil or administrative proceeding.

(2) A loss prevention review team shall consist of at least three but no more than five persons, and may include independent consultants, contractors, or state employees, but it shall not include any person employed by the agency involved in the loss or risk of loss giving rise to the review, nor any person with testimonial knowledge of the incident to be reviewed. At least one member of the review team shall have expertise relevant to the matter under review.

(3) The loss prevention review team shall review the death, serious injury, or other incident and the circumstances surrounding it, evaluate its causes, and recommend steps to reduce the risk of such incidents occurring in the future. The loss prevention review team shall accomplish these tasks by reviewing relevant documents, interviewing persons with relevant knowledge, and reporting its recommendations in writing to the director and the director of the agency involved in the loss or risk of loss within the time requested by the director. The final report shall not disclose the contents of any documents required by law to be kept confidential.

(4) Pursuant to guidelines established by the director, state agencies must notify the department immediately upon becoming aware of a death, serious injury, or other substantial loss that is alleged or suspected to be caused at least in part by the actions of the state agency. State agencies shall provide the loss prevention review team ready access to relevant documents in their possession and ready access to their employees. [2011 1st sp.s. c 43 § 508; 2002 c 333 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—2002 c 333: "The legislature intends that when the death of a person, serious injury to a person, or other substantial loss is alleged or suspected to be caused at least in part by the actions of a state agency, a loss prevention review shall be conducted. The legislature recognizes the tension inherent in a loss prevention review and the need to balance the prevention of harm to the public with state agencies' accountability to the public. The legislature intends to minimize this tension and to foster open and frank discussions by granting members of the loss prevention review teams protection from having to testify, and by declaring a general rule that the work product of these teams is inadmissible in civil actions or administrative proceedings." [2002 c 333 § 1.]

43.41.380 Loss prevention review team—Final report—Use of report and testimony limited—Response report. (1) The final report from a loss prevention review team to the director shall be made public by the director promptly upon receipt, and shall be subject to public disclosure. The final report shall be subject to discovery in a civil or administrative proceeding. However, the final report shall not be admitted into evidence or otherwise used in a civil or administrative proceeding except pursuant to subsection (2) of this section.

(2) The relevant excerpt or excerpts from the final report of a loss prevention review team may be used to impeach a fact witness in a civil or administrative proceeding only if the party wishing to use the excerpt or excerpts from the report first shows the court by clear and convincing evidence that the witness, in testimony provided in deposition or at trial in the present proceeding, has contradicted his or her previous statements to the loss prevention review team on an issue of fact material to the present proceeding. In that case, the party may use only the excerpt or excerpts necessary to demonstrate the contradiction. This section shall not be interpreted

as expanding the scope of material that may be used to impeach a witness.

(3) No member of a loss prevention review team may be examined in a civil or administrative proceeding as to (a) the work of the loss prevention review team, (b) the incident under review, (c) his or her statements, deliberations, thoughts, analyses, or impressions relating to the work of the loss prevention review team or the incident under review, or (d) the statements, deliberations, thoughts, analyses, or impressions of any other member of the loss prevention review team, or any person who provided information to it, relating to the work of the loss prevention review team or the incident under review.

(4) Any document that exists prior to the appointment of a loss prevention review team, or that is created independently of such a team, does not become inadmissible merely because it is reviewed or used by the loss prevention review team. A person does not become unavailable as a witness merely because the person has been interviewed by or has provided a statement to a loss prevention review team. However, if called as a witness, the person may not be examined regarding the person's interactions with the loss prevention review team, including without limitation whether the loss prevention review team interviewed the person, what questions the loss prevention review team asked, and what answers the person provided to the loss prevention review team. This section shall not be construed as restricting the person from testifying fully in any proceeding regarding his or her knowledge of the incident under review.

(5) Documents prepared by or for the loss prevention review team are inadmissible and may not be used in a civil or administrative proceeding, except that excerpts may be used to impeach the credibility of a witness under the same circumstances that excerpts of the final report may be used pursuant to subsection (2) of this section.

(6) The restrictions set forth in this section shall not apply in a licensing or disciplinary proceeding arising from an agency's effort to revoke or suspend the license of any licensed professional based in whole or in part upon allegations of wrongdoing in connection with the death, injury, or other incident reviewed by the loss prevention review team.

(7) Within one hundred twenty days after completion of the final report of a loss prevention review team, the agency under review shall issue to the department a response to the report. The response will indicate (a) which of the report's recommendations the agency hopes to implement, (b) whether implementation of those recommendations will require additional funding or legislation, and (c) whatever other information the director may require. This response shall be considered part of the final report and shall be subject to all provisions of this section that apply to the final report, including without limitation the restrictions on admissibility and use in civil or administrative proceedings and the obligation of the director to make the final report public.

(8) Nothing in RCW 43.41.370 or this section is intended to limit the scope of a legislative inquiry into or review of an incident that is the subject of a loss prevention review.

(9) Nothing in RCW 43.41.370 or in this section affects chapter 70.41 RCW and application of that chapter to state-owned or managed hospitals licensed under chapter 70.41 RCW. [2011 1st sp.s. c 43 § 509; 2002 c 333 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—2002 c 333: See note following RCW 43.41.370.

43.41.981 Transfer of certain powers, duties, functions, and assets of the department of personnel. (1) Those powers, duties, and functions of the department of personnel being transferred to the office of financial management as set forth in Part IV, chapter 43, Laws of 2011 1st sp. sess. are hereby transferred to the office of financial management.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of personnel pertaining to the powers, duties, and functions transferred shall be delivered to the custody of the office of financial management. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of personnel in carrying out the powers, duties, and functions transferred shall be made available to the office of financial management. All funds, credits, or other assets held by the department of personnel in connection with the powers, duties, and functions transferred shall be assigned to the office of financial management.

(b) Any appropriations made to the department of personnel for carrying out the powers, functions, and duties transferred shall, on October 1, 2011, be transferred and credited to the office of financial management.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the department of personnel pertaining to the powers, duties, and functions transferred shall be continued and acted upon by the office of financial management. All existing contracts and obligations shall remain in full force and shall be performed by the office of financial management.

(4) The transfer of the powers, duties, functions, and personnel of the department of personnel shall not affect the validity of any act performed before October 1, 2011.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(6) All employees of the department of personnel engaged in performing the powers, functions, and duties transferred to the office of financial management, are transferred to the office of financial management. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the office of financial management to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service law. [2011 1st sp.s. c 43 § 1006.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Chapter 43.41A RCW

OFFICE OF THE CHIEF INFORMATION OFFICER

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43.41A.003 Purpose. Information technology is a tool used by state agencies to improve their ability to deliver public services efficiently and effectively. Advances in information technology - including advances in hardware, software, and business processes for implementing and managing these resources - offer new opportunities to improve the level of support provided to citizens and state agencies and to reduce the per-transaction cost of these services. These advances are one component in the process of reengineering how government delivers services to citizens.

To fully realize the service improvements and cost efficiency from the effective application of information technology to its business processes, state government must establish

decision-making structures that connect business processes and information technology in an operating model. Many of these business practices transcend individual agency processes and should be worked at the enterprise level. To do this requires an effective partnership of executive management, business processes owners, and providers of support functions necessary to efficiently and effectively deliver services to citizens.

To maximize the potential for information technology to contribute to government business process reengineering the state must establish clear central authority to plan, set enterprise standards, and provide project oversight and management analysis of the various aspects of a business process.

Establishing the office of chief information officer and partnering it with the director of financial management will provide state government with the cohesive structure necessary to develop improved operating models with agency directors and reengineer business process to enhance service delivery while capturing savings. [2011 1st sp.s. c 43 § 701.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.006 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Backbone network" means the shared high-density portions of the state's telecommunications transmission facilities. It includes specially conditioned high-speed communications carrier lines, multiplexors, switches associated with such communications lines, and any equipment and software components necessary for management and control of the backbone network.

(2) "Board" means the technology services board.

(3) "Committee" means the state interoperability executive committee.

(4) "Educational sectors" means those institutions of higher education, school districts, and educational service districts that use the network for distance education, data transmission, and other uses permitted by the board.

(5) "Enterprise architecture" means an ongoing program for translating business vision and strategy into effective enterprise change. It is a continuous activity. Enterprise architecture creates, communicates, and improves the key principles and models that describe the enterprise's future state and enable its evolution.

(6) "Equipment" means the machines, devices, and transmission facilities used in information processing, including but not limited to computers, terminals, telephones, wireless communications system facilities, cables, and any physical facility necessary for the operation of such equipment.

(7) "Information" includes, but is not limited to, data, text, voice, and video.

(8) "Information technology" includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.

(9) "Information technology portfolio" or "portfolio" means a strategic management process documenting relation-

ships between agency missions and information technology and telecommunications investments.

(10) "K-20 network" means the network established in RCW 43.41A.085.

(11) "Local governments" includes all municipal and quasi-municipal corporations and political subdivisions, and all agencies of such corporations and subdivisions authorized to contract separately.

(12) "Office" means the office of the chief information officer.

(13) "Oversight" means a process of comprehensive risk analysis and management designed to ensure optimum use of information technology resources and telecommunications.

(14) "Proprietary software" means that software offered for sale or license.

(15) "State agency" or "agency" means every state office, department, division, bureau, board, commission, or other state agency, including offices headed by a statewide elected official.

(16) "Telecommunications" includes, but is not limited to, wireless or wired systems for transport of voice, video, and data communications, network systems, requisite facilities, equipment, system controls, simulation, electronic commerce, and all related interactions between people and machines. "Telecommunications" does not include public safety communications. [2011 1st sp.s. c 43 § 705.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.010 Office of the chief information officer—Created—Powers, duties, and functions. (1) The office of the chief information officer is created within the office of financial management.

(2) Powers, duties, and functions assigned to the department of information services as specified in this chapter shall be transferred to the office of chief information officer as provided in this chapter.

(3) The primary duties of the office are:

(a) To prepare and lead the implementation of a strategic direction and enterprise architecture for information technology for state government;

(b) To enable the standardization and consolidation of information technology infrastructure across all state agencies to support enterprise-based system development and improve and maintain service delivery;

(c) To establish standards and policies for the consistent and efficient operation of information technology services throughout state government;

(d) To establish statewide enterprise architecture that will serve as the organizing standard for information technology for state agencies;

(e) [To] Educate and inform state managers and policy-makers on technological developments, industry trends and best practices, industry benchmarks that strengthen decision making and professional development, and industry understanding for public managers and decision makers.

(4) In the case of institutions of higher education, the powers of the office and the provisions of this chapter apply to business and administrative applications but do not apply to (a) academic and research applications; and (b) medical, clinical, and health care applications, including the business

and administrative applications for such operations. However, institutions of higher education must disclose to the office any proposed academic applications that are enterprise-wide in nature relative to the needs and interests of other institutions of higher education.

(5) The legislature and the judiciary, which are constitutionally recognized as separate branches of government, are strongly encouraged to coordinate with the office and participate in shared services initiatives and the development of enterprise-based strategies, where appropriate. [2011 1st sp.s. c 43 § 702.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.015 Chief information officer—Executive head and appointing authority. (1) The executive head and appointing authority of the office is the chief information officer. The chief information officer shall be appointed by the governor, subject to confirmation by the senate. The chief information officer shall serve at the pleasure of the governor. The chief information officer shall be paid a salary fixed by the governor. If a vacancy occurs in the position of chief information officer while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate at which time he or she shall present to that body his or her nomination for the position.

(2) The chief information officer may employ staff members, some of whom may be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter, and such other duties as may be authorized by law. The chief information officer may delegate any power or duty vested in him or her by this chapter or other law.

(3) The internal affairs of the office shall be under the control of the chief information officer in order that the chief information officer may manage the office in a flexible and intelligent manner as dictated by changing contemporary circumstances. Unless specifically limited by law, the chief information officer shall have complete charge and supervisory powers over the office. The chief information officer may create such administrative structures as the chief information officer deems appropriate, except as otherwise specified by law, and the chief information officer may employ staff members as may be necessary in accordance with chapter 41.06 RCW, except as otherwise provided by law. [2011 1st sp.s. c 43 § 703.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.020 Chief information officer—Duties. The chief information officer shall:

(1) Supervise and administer the activities of the office of chief information officer;

(2) Exercise all the powers and perform all the duties prescribed by law with respect to the administration of this chapter including:

(a) Appoint such professional, technical, and clerical assistants and employees as may be necessary to perform the duties imposed by this chapter; and

(b) Report to the governor any matters relating to abuses and evasions of this chapter.

(3) In addition to other powers and duties granted, the chief information officer has the following powers and duties:

(a) Enter into contracts on behalf of the state to carry out the purposes of this chapter;

(b) Accept and expend gifts and grants that are related to the purposes of this chapter, whether such grants be of federal or other funds;

(c) Apply for grants from public and private entities, and receive and administer any grant funding received for the purpose and intent of this chapter;

(d) Adopt rules in accordance with chapter 34.05 RCW and perform all other functions necessary and proper to carry out the purposes of this chapter;

(e) Delegate powers, duties, and functions as the chief information officer deems necessary for efficient administration, but the chief information officer shall be responsible for the official acts of the officers and employees of the office; and

(f) Perform other duties as are necessary and consistent with law. [2011 1st sp.s. c 43 § 704.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.025 Governing information technology—Standards and policies—Powers and duties of office. (1) The chief information officer shall establish standards and policies to govern information technology in the state of Washington.

(2) The office shall have the following powers and duties related to information services:

(a) To develop statewide standards and policies governing the acquisition and disposition of equipment, software, and personal and purchased services, licensing of the radio spectrum by or on behalf of state agencies, and confidentiality of computerized data;

(b) To develop statewide or interagency technical policies, standards, and procedures;

(c) To review and approve standards and common specifications for new or expanded telecommunications networks proposed by agencies, public postsecondary education institutions, educational service districts, or statewide or regional providers of K-12 information technology services;

(d) To develop a detailed business plan for any service or activity to be contracted under RCW 41.06.142(7)(b) by the consolidated technology services agency;

(e) To provide direction concerning strategic planning goals and objectives for the state. The office shall seek input from the legislature and the judiciary; and

(f) To establish policies for the periodic review by the office of agency performance which may include but are not limited to analysis of:

(i) Planning, management, control, and use of information services;

(ii) Training and education; and

(iii) Project management.

(3) Statewide technical standards to promote and facilitate electronic information sharing and access are an essential component of acceptable and reliable public access service and complement content-related standards designed to meet those goals. The office shall:

(a) Establish technical standards to facilitate electronic access to government information and interoperability of information systems, including wireless communications systems; and

(b) Require agencies to include an evaluation of electronic public access needs when planning new information systems or major upgrades of systems.

In developing these standards, the office is encouraged to include the state library, state archives, and appropriate representatives of state and local government.

(4) The office shall perform other matters and things necessary to carry out the purposes and provisions of this chapter. [2011 1st sp.s. c 43 § 706.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.030 Strategic information technology plan—Biennial performance reports. (1) The office shall prepare a state strategic information technology plan which shall establish a statewide mission, goals, and objectives for the use of information technology, including goals for electronic access to government records, information, and services. The plan shall be developed in accordance with the standards and policies established by the office. The office shall seek the advice of the board in the development of this plan.

The plan shall be updated as necessary and submitted to the governor and the legislature.

(2) The office shall prepare a biennial state performance report on information technology based on agency performance reports required under RCW 43.41A.045 and other information deemed appropriate by the office. The report shall include, but not be limited to:

(a) An analysis, based upon agency portfolios, of the state's information technology infrastructure, including its value, condition, and capacity;

(b) An evaluation of performance relating to information technology;

(c) An assessment of progress made toward implementing the state strategic information technology plan, including progress toward electronic access to public information and enabling citizens to have two-way access to public records, information, and services; and

(d) An analysis of the success or failure, feasibility, progress, costs, and timeliness of implementation of major information technology projects under RCW 43.41A.055. At a minimum, the portion of the report regarding major technology projects must include:

(i) The total cost data for the entire life-cycle of the project, including capital and operational costs, broken down by staffing costs, contracted service, hardware purchase or lease, software purchase or lease, travel, and training. The original budget must also be shown for comparison;

(ii) The original proposed project schedule and the final actual project schedule;

(iii) Data regarding progress towards meeting the original goals and performance measures of the project;

(iv) Discussion of lessons learned on the project, performance of any contractors used, and reasons for project delays or cost increases; and

(v) Identification of benefits generated by major information technology projects developed under RCW 43.41A.055.

Copies of the report shall be distributed biennially to the governor and the legislature. The major technology section of the report must examine major information technology projects completed in the previous biennium. [2011 1st sp.s. c 43 § 707.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.035 Managing information technology as a statewide portfolio. Management of information technology across state government requires managing resources and business processes across multiple agencies. It is no longer sufficient to pursue efficiencies within agency or individual business process boundaries. The state must manage the business process changes and information technology in support of business processes as a statewide portfolio. The chief information officer will use agency information technology portfolio planning as input to develop a statewide portfolio to guide resource allocation and prioritization decisions. [2011 1st sp.s. c 43 § 708.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.040 Agency information technology portfolio—Basis for decisions and plans. An agency information technology portfolio shall serve as the basis for making information technology decisions and plans which may include, but are not limited to:

- (1) System refurbishment, acquisitions, and development efforts;
- (2) Setting goals and objectives for using information technology;
- (3) Assessments of information processing performance, resources, and capabilities;
- (4) Ensuring the appropriate transfer of technological expertise for the operation of new systems developed using external resources;
- (5) Guiding new investment demand, prioritization, selection, performance, and asset value of technology and telecommunications; and
- (6) Progress toward providing electronic access to public information. [2011 1st sp.s. c 43 § 709.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.045 Agency information technology portfolio—Contents—Review and approval—Performance reports—Exemptions. (1) Each agency shall develop an information technology portfolio consistent with RCW 43.41A.110. The superintendent of public instruction shall develop its portfolio in conjunction with educational service districts and statewide or regional providers of K-12 education information technology services.

(2) Agency portfolios shall include, but not be limited to, the following:

(a) A baseline assessment of the agency's information technology resources and capabilities that will serve as the

benchmark for subsequent planning and performance measures;

(b) A statement of the agency's mission, goals, and objectives for information technology, including goals and objectives for achieving electronic access to agency records, information, and services;

(c) An explanation of how the agency's mission, goals, and objectives for information technology support and conform to the state strategic information technology plan developed under RCW 43.41A.030;

(d) An implementation strategy to provide electronic access to public records and information. This implementation strategy must be assembled to include:

- (i) Compliance with Title 40 RCW;
- (ii) Adequate public notice and opportunity for comment;
- (iii) Consideration of a variety of electronic technologies, including those that help transcend geographic locations, standard business hours, economic conditions of users, and disabilities;

(iv) Methods to educate both state employees and the public in the effective use of access technologies;

(e) Projects and resources required to meet the objectives of the portfolio; and

(f) Where feasible, estimated schedules and funding required to implement identified projects.

(3) Portfolios developed under subsection (1) of this section shall be submitted to the office for review and approval. The chief information officer may reject, require modification to, or approve portfolios as deemed appropriate. Portfolios submitted under this subsection shall be updated and submitted for review and approval as necessary.

(4) Each agency shall prepare and submit to the office a biennial performance report that evaluates progress toward the objectives articulated in its information technology portfolio and the strategic priorities of the state. The superintendent of public instruction shall develop its portfolio in conjunction with educational service districts and statewide or regional providers of K-12 education information technology services. The report shall include:

(a) An evaluation of the agency's performance relating to information technology;

(b) An assessment of progress made toward implementing the agency information technology portfolio;

(c) Progress toward electronic access to public information and enabling citizens to have two-way interaction for obtaining information and services from agencies; and

(d) An inventory of agency information services, equipment, and proprietary software.

(5) The office shall establish standards, elements, form, and format for plans and reports developed under this section.

(6) Agency activities to increase electronic access to public records and information, as required by this section, must be implemented within available resources and existing agency planning processes.

(7) The office may exempt any agency from any or all of the requirements of this section. [2011 1st sp.s. c 43 § 710.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.050 Evaluation of agency information technology spending and budget requests. (1) At the request of the director of financial management, the office shall evaluate both state agency information technology current spending and technology budget requests, including those proposed by the superintendent of public instruction, in conjunction with educational service districts, or statewide or regional providers of K-12 education information technology services. The office shall submit recommendations for funding all or part of such requests to the director of financial management. The office shall also submit recommendations regarding consolidation and coordination of similar proposals or other efficiencies it finds in reviewing proposals.

(2) The office shall establish criteria, consistent with portfolio-based information technology management, for the evaluation of agency budget requests under this section. Technology budget requests shall be evaluated in the context of the state's information technology portfolio; technology initiatives underlying budget requests are subject to review by the office. Criteria shall include, but not be limited to: Feasibility of the proposed projects, consistency with the state strategic information technology plan and the state enterprise architecture, consistency with information technology portfolios, appropriate provision for public electronic access to information, evidence of business process streamlining and gathering of business and technical requirements, services, duration of investment, costs, and benefits. [2011 1st sp.s. c 43 § 711.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.055 Planning, implementation, and evaluation of major projects—Standards and policies. (1) The office shall establish standards and policies governing the planning, implementation, and evaluation of major information technology projects, including those proposed by the superintendent of public instruction, in conjunction with educational service districts, or statewide or regional providers of K-12 education information technology services. The standards and policies shall:

(a) Establish criteria to identify projects which are subject to this section. Such criteria shall include, but not be limited to, significant anticipated cost, complexity, or statewide significance of the project; and

(b) Establish a model process and procedures which state agencies shall follow in developing and implementing projects within their information technology portfolios. This process may include project oversight experts or panels, as appropriate. Agencies may propose, for approval by the office, a process and procedures unique to the agency. The office may accept or require modification of such agency proposals or the office may reject such agency proposals and require use of the model process and procedures established under this subsection. Any process and procedures developed under this subsection shall require (i) distinct and identifiable phases upon which funding may be based, (ii) user validation of products through system demonstrations and testing of prototypes and deliverables, and (iii) other elements identified by the office.

The chief information officer may suspend or terminate a major project, and direct that the project funds be placed

into unallotted reserve status, if the chief information officer determines that the project is not meeting or is not expected to meet anticipated performance standards.

(2) The office of financial management shall establish policies and standards consistent with portfolio-based information technology management to govern the funding of projects developed under this section. The policies and standards shall provide for:

(a) Funding of a project under terms and conditions mutually agreed to by the chief information officer, the director of financial management, and the head of the agency proposing the project. However, the office of financial management may require incremental funding of a project on a phase-by-phase basis whereby funds for a given phase of a project may be released only when the office of financial management determines, with the advice of the office, that the previous phase is satisfactorily completed; and

(b) Other elements deemed necessary by the office of financial management. [2011 1st sp.s. c 43 § 712.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.060 Major technology projects and services—Approval. (1) Prior to making a commitment to purchase, acquire, or develop a major information technology project or service, state agencies must provide a proposal to the office outlining the business case of the proposed product or service, including the upfront and ongoing cost of the proposal.

(2) Within sixty days of receipt of a proposal, the office shall approve the proposal, reject it, or propose modifications.

(3) In reviewing a proposal, the office must determine whether the product or service is consistent with:

(a) The standards and policies developed by the office pursuant to RCW 43.41A.025; and

(b) The state's enterprise-based strategy.

(4) If a substantially similar product or service is offered by the consolidated technology services agency established in RCW 43.105.047, the office may require the agency to procure the product or service through the consolidated technology services agency, if doing so would benefit the state as an enterprise.

(5) The office shall provide guidance to agencies as to what threshold of information technology spending constitutes a major information technology product or service under this section. [2011 1st sp.s. c 43 § 713.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.065 Enterprise-based strategy for information technology—Use of ongoing enterprise architecture program. (1) The office shall develop an enterprise-based strategy for information technology in state government informed by portfolio management planning and information technology expenditure information collected from state agencies pursuant to RCW 43.88.092.

(2)(a) The office shall develop an ongoing enterprise architecture program for translating business vision and strategy into effective enterprise change. This program will create, communicate, and improve the key principles and mod-

els that describe the enterprise's future state and enable its evolution, in keeping with the priorities of government and the information technology strategic plan.

(b) The enterprise architecture program will facilitate business process collaboration among agencies statewide; improving the reliability, interoperability, and sustainability of the business processes that state agencies use.

In developing an enterprise-based strategy for the state, the office is encouraged to consider the following strategies as possible opportunities for achieving greater efficiency:

(i) Developing evaluation criteria for deciding which common enterprise-wide business processes should become managed as enterprise services;

(ii) Developing a roadmap of priorities for creating enterprise services;

(iii) Developing decision criteria for determining implementation criteria for centralized or decentralized enterprise services;

(iv) Developing evaluation criteria for deciding which technology investments to continue, hold, or drop; and

(v) Performing such other duties as may be assigned by the office to promote effective enterprise change.

(c) The program will establish performance measurement criteria for each of its initiatives; will measure the success of those initiatives; and will assess its quarterly results with the chief information officer to determine whether to continue, revise, or disband the initiative. [2011 1st sp.s. c 43 § 714.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.070 Technology services board—Created—Composition. The technology services board is created within the office of the chief information officer.

(1) The board shall be composed of thirteen members. Six members shall be appointed by the governor, three of whom shall be representatives of state agencies or institutions, and three of whom shall be representatives of the private sector. Of the state agency representatives, at least one of the representatives must have direct experience using the software projects overseen by the board or reasonably expect to use the new software developed under the oversight of the board. Two members shall represent the house of representatives and shall be selected by the speaker of the house of representatives with one representative chosen from each major caucus of the house of representatives; two members shall represent the senate and shall be appointed by the president of the senate with one representative chosen from each major caucus of the senate. One member shall be the chief information officer who shall be a voting member of the board and serve as chair. Two nonvoting members with information technology expertise must be appointed by the governor as follows:

(a) One member representing state agency bargaining units shall be selected from a list of three names submitted by each of the general government exclusive bargaining representatives; and

(b) One member representing local governments shall be selected from a list of three names submitted by commonly recognized local government organizations.

The governor may reject all recommendations and request new recommendations.

(2) Of the initial members, three must be appointed for a one-year term, three must be appointed for a two-year term, and four must be appointed for a three-year term. Thereafter, members must be appointed for three-year terms.

(3) Vacancies shall be filled in the same manner that the original appointments were made for the remainder of the member's term.

(4) Members of the board shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The office shall provide staff support to the board. [2011 1st sp.s. c 43 § 715.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.075 Technology services board—Powers and duties. The board shall have the following powers and duties related to information services:

(1) To review and approve standards and procedures, developed by the office of the chief information officer, governing the acquisition and disposition of equipment, proprietary software, and purchased services, licensing of the radio spectrum by or on behalf of state agencies, and confidentiality of computerized data;

(2) To review and approve statewide or interagency technical policies, standards, and procedures developed by the office of the chief information officer;

(3) To review, approve, and provide oversight of major information technology projects to ensure that no major information technology project proposed by a state agency is approved or authorized funding by the board without consideration of the technical and financial business case for the project, including a review of:

(a) The total cost of ownership across the life of the project;

(b) All major technical options and alternatives analyzed, and reviewed, if necessary, by independent technical sources; and

(c) Whether the project is technically and financially justifiable when compared against the state's enterprise-based strategy, long-term technology trends, and existing or potential partnerships with private providers or vendors;

(4) To review and approve standards and common specifications for new or expanded telecommunications networks proposed by agencies, public postsecondary education institutions, educational service districts, or statewide or regional providers of K-12 information technology services, and to assure the cost-effective development and incremental implementation of a statewide video telecommunications system to serve: Public schools; educational service districts; vocational-technical institutes; community colleges; colleges and universities; state and local government; and the general public through public affairs programming;

(5) To develop a policy to determine whether a proposed project, product, or service should undergo an independent technical and financial analysis prior to submitting a request to the office of financial management for the inclusion in any proposed operating, capital, or transportation budget;

(6) To approve contracting for services and activities under RCW 41.06.142(7) for the consolidated technology

service agency. To approve any service or activity to be contracted under RCW 41.06.142(7)(b), the board must also review the proposed business plan and recommendation submitted by the office;

(7) To consider, on an ongoing basis, ways to promote strategic investments in enterprise-level information technology projects that will result in service improvements and cost efficiency;

(8) To provide a forum to solicit external expertise and perspective on developments in information technology, enterprise architecture, standards, and policy development; and

(9) To provide a forum where ideas and issues related to information technology plans, policies, and standards can be reviewed. [2011 1st sp.s. c 43 § 716.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.080 State interoperability executive committee—Composition—Responsibilities. (1) The chief information officer shall appoint a state interoperability executive committee, the membership of which must include, but not be limited to, representatives of the military department, the Washington state patrol, the department of transportation, the office of the chief information officer, the department of natural resources, city and county governments, state and local fire chiefs, police chiefs, and sheriffs, and state and local emergency management directors. The chair and legislative members of the board will serve as nonvoting ex officio members of the committee. Voting membership may not exceed fifteen members.

(2) The chief information officer shall appoint the chair of the committee from among the voting members of the committee.

(3) The state interoperability executive committee has the following responsibilities:

(a) Develop policies and make recommendations to the office for technical standards for state wireless radio communications systems, including emergency communications systems. The standards must address, among other things, the interoperability of systems, taking into account both existing and future systems and technologies;

(b) Coordinate and manage on behalf of the office the licensing and use of state-designated and state-licensed radio frequencies, including the spectrum used for public safety and emergency communications, and serve as the point of contact with the federal communications commission on matters relating to allocation, use, and licensing of radio spectrum;

(c) Coordinate the purchasing of all state wireless radio communications system equipment to ensure that:

(i) After the transition from a radio over internet protocol network, any new trunked system shall be, at a minimum, project-25;

(ii) Any new system that requires advanced digital features shall be, at a minimum, project-25; and

(iii) Any new system or equipment purchases shall be, at a minimum, upgradable to project-25;

(d) Seek support, including possible federal or other funding, for state-sponsored wireless communications systems;

(e) Develop recommendations for legislation that may be required to promote interoperability of state wireless communications systems;

(f) Foster cooperation and coordination among public safety and emergency response organizations;

(g) Work with wireless communications groups and associations to ensure interoperability among all public safety and emergency response wireless communications systems; and

(h) Perform such other duties as may be assigned by the office to promote interoperability of wireless communications systems.

(4) The office shall provide administrative support to the committee. [2011 1st sp.s. c 43 § 717.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.085 K-20 network—Duty to govern and oversee technical design, implementation, and operation. (1)

The office has the duty to govern and oversee the technical design, implementation, and operation of the K-20 network including, but not limited to, the following duties: Establishment and implementation of K-20 network technical policy, including technical standards and conditions of use; review and approval of network design; and resolving user/provider disputes.

(2) The office has the following powers and duties:

(a) In cooperation with the educational sectors and other interested parties, to establish goals and measurable objectives for the network;

(b) To ensure that the goals and measurable objectives of the network are the basis for any decisions or recommendations regarding the technical development and operation of the network;

(c) To adopt, modify, and implement policies to facilitate network development, operation, and expansion. Such policies may include but need not be limited to the following issues: Quality of educational services; access to the network by recognized organizations and accredited institutions that deliver educational programming, including public libraries; prioritization of programming within limited resources; prioritization of access to the system and the sharing of technological advances; network security; identification and evaluation of emerging technologies for delivery of educational programs; future expansion or redirection of the system; network fee structures; and costs for the development and operation of the network;

(d) To prepare and submit to the governor and the legislature a coordinated budget for network development, operation, and expansion. The budget shall include the chief information officer's recommendations on (i) any state funding requested for network transport and equipment, distance education facilities and hardware or software specific to the use of the network, and proposed new network end sites, (ii) annual copayments to be charged to public educational sector institutions and other public entities connected to the network, and (iii) charges to nongovernmental entities connected to the network;

(e) To adopt and monitor the implementation of a methodology to evaluate the effectiveness of the network in achieving the educational goals and measurable objectives;

(f) To establish by rule acceptable use policies governing user eligibility for participation in the K-20 network, acceptable uses of network resources, and procedures for enforcement of such policies. The office shall set forth appropriate procedures for enforcement of acceptable use policies, that may include suspension of network connections and removal of shared equipment for violations of network conditions or policies. The office shall have sole responsibility for the implementation of enforcement procedures relating to technical conditions of use. [2011 1st sp.s. c 43 § 718.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.090 K-20 operations cooperative—Maintained by office. The office shall maintain, in consultation with the K-20 network users, the K-20 operations cooperative, which shall be responsible for day-to-day network management, technical network status monitoring, technical problem response coordination, and other duties as agreed to by the office and the educational sectors. Funding for the K-20 operations cooperative shall be provided from the education technology revolving fund under RCW 43.41A.105. [2011 1st sp.s. c 43 § 719.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.095 Technical plan of the K-20 telecommunications system and ongoing system enhancements—Contents. The chief information officer, in conjunction with the K-20 network users, shall maintain a technical plan of the K-20 telecommunications system and ongoing system enhancements. The office shall ensure that the technical plan adheres to the goals and objectives established under RCW 43.41A.025. The technical plan shall provide for:

(1) A telecommunications backbone connecting educational service districts, the main campuses of public baccalaureate institutions, the branch campuses of public research institutions, and the main campuses of community colleges and technical colleges.

(2)(a) Connection to the K-20 network by entities that include, but need not be limited to: School districts, public higher education off-campus and extension centers, and branch campuses of community colleges and technical colleges, as prioritized by the chief information officer; (b) distance education facilities and components for entities listed in this subsection and subsection (1) of this section; and (c) connection for independent nonprofit institutions of higher education, provided that:

(i) The chief information officer and each independent nonprofit institution of higher education to be connected agree in writing to terms and conditions of connectivity. The terms and conditions shall ensure, among other things, that the provision of K-20 services does not violate Article VIII, section 5 of the state Constitution and that the institution shall adhere to K-20 network policies; and

(ii) The chief information officer determines that inclusion of the independent nonprofit institutions of higher education will not significantly affect the network's eligibility for federal universal service fund discounts or subsidies.

(3) Subsequent phases may include, but need not be limited to, connections to public libraries, state and local govern-

ments, community resource centers, and the private sector. [2011 1st sp.s. c 43 § 720.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.100 Oversight of technical aspects of K-20 network. (1) In overseeing the technical aspects of the K-20 network, the office is not intended to duplicate the statutory responsibilities of the higher education coordinating board, the superintendent of public instruction, the state librarian, or the governing boards of the institutions of higher education.

(2) The office may not interfere in any curriculum or legally offered programming offered over the K-20 network.

(3) The responsibility to review and approve standards and common specifications for the K-20 network remains the responsibility of the office under RCW 43.41A.025.

(4) The coordination of telecommunications planning for the common schools remains the responsibility of the superintendent of public instruction. Except as set forth in RCW 43.41A.025(2)(f), the office may recommend, but not require, revisions to the superintendent's telecommunications plans. [2011 1st sp.s. c 43 § 721.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.105 Education technology revolving fund. (1) The education technology revolving fund is created in the custody of the state treasurer. All receipts from billings under subsection (2) of this section must be deposited in the revolving fund. Only the chief information officer or the chief information officer's designee may authorize expenditures from the fund. The revolving fund shall be used to pay for K-20 network operations, transport, equipment, software, supplies, and services, maintenance and depreciation of on-site data, and shared infrastructure, and other costs incidental to the development, operation, and administration of shared educational information technology services, telecommunications, and systems. The revolving fund shall not be used for the acquisition, maintenance, or operations of local telecommunications infrastructure or the maintenance or depreciation of on-premises video equipment specific to a particular institution or group of institutions.

(2) The revolving fund and all disbursements from the revolving fund are subject to the allotment procedure under chapter 43.88 RCW, but an appropriation is not required for expenditures. The office shall, subject to the review and approval of the office of financial management, establish and implement a billing structure for network services identified in subsection (1) of this section.

(3) The office shall charge those public entities connected to the K-20 telecommunications system under RCW 43.41A.095 an annual copayment per unit of transport connection as determined by the legislature after consideration of the board's recommendations. This copayment shall be deposited into the revolving fund to be used for the purposes in subsection (1) of this section. It is the intent of the legislature to appropriate to the revolving fund such moneys as necessary to cover the costs for transport, maintenance, and depreciation of data equipment located at the individual public institutions, maintenance and depreciation of the K-20 network backbone, and services provided to the network

under RCW 43.41A.085. [2011 1st sp.s. c 43 § 722; 2004 c 276 § 910; 1999 c 285 § 10; 1997 c 180 § 1. Formerly RCW 43.105.835, 28D.02.065.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Additional notes found at www.leg.wa.gov

43.41A.110 Information technology portfolios. Information technology portfolios shall reflect (1) links among an agency's objectives, business plan, and technology; (2) analysis of the effect of an agency's proposed new technology investments on its existing infrastructure and business functions; and (3) analysis of the effect of proposed information technology investments on the state's information technology infrastructure. [1999 c 80 § 2. Formerly RCW 43.105.172.]

43.41A.115 Electronic access to public records—Findings—Intent. Based upon the recommendations of the public information access policy task force, the legislature finds that government records and information are a vital resource to both government operations and to the public that government serves. Broad public access to state and local government records and information has potential for expanding citizen access to that information and for improving government services. Electronic methods for locating and transferring information can improve linkages between and among citizens, organizations, businesses, and governments. Information must be managed with great care to meet the objectives of citizens and their governments.

It is the intent of the legislature to encourage state and local governments to develop, store, and manage their public records and information in electronic formats to meet their missions and objectives. Further, it is the intent of the legislature for state and local governments to set priorities for making public records widely available electronically to the public. [1996 c 171 § 1. Formerly RCW 43.105.250.]

Additional notes found at www.leg.wa.gov

43.41A.120 Electronic access to public records—Definitions. (Effective until January 1, 2012.) Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Local government" means every county, city, town, and every other municipal or quasi-municipal corporation.

(2) "Public record" means as defined in *RCW 42.17.020 and chapter 40.14 RCW, and includes legislative records and court records that are available for public inspection.

(3) "State agency" includes every state office, department, division, bureau, board, and commission of the state, and each state elected official who is a member of the executive department. [1996 c 171 § 2. Formerly RCW 43.105.260.]

***Reviser's note:** RCW 42.17.020 was recodified as RCW 42.17A.005 pursuant to 2010 c 204 § 1102, effective January 1, 2012.

Additional notes found at www.leg.wa.gov

43.41A.120 Electronic access to public records—Definitions. (Effective January 1, 2012.) Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Local government" means every county, city, town, and every other municipal or quasi-municipal corporation.

(2) "Public record" means as defined in RCW 42.56.010 and chapter 40.14 RCW, and includes legislative records and court records that are available for public inspection.

(3) "State agency" includes every state office, department, division, bureau, board, and commission of the state, and each state elected official who is a member of the executive department. [2011 c 60 § 38; 1996 c 171 § 2. Formerly RCW 43.105.260.]

Effective date—2011 c 60: See RCW 42.17A.919.

Additional notes found at www.leg.wa.gov

43.41A.125 Electronic access to public records—Planning. Within existing resources, state agencies shall plan for and implement processes for making information available electronically. Public demand and agencies' missions and goals shall drive the selection and priorities for government information to be made available electronically. When planning for increased public electronic access, agencies should determine what information the public wants and needs most. Widespread public electronic access does not mean that all government information is able to be made available electronically.

(1) In planning for and implementing electronic access, state agencies shall:

(a) Where appropriate, plan for electronic public access and two-way electronic interaction when acquiring, redesigning, or rebuilding information systems;

(b) Focus on providing electronic access to current information, leaving archival material to be made available digitally as resources allow or as a need arises;

(c) Coordinate technology planning across agency boundaries in order to facilitate electronic access to vital public information;

(d) Develop processes to determine which information the public most wants and needs;

(e) Develop and employ methods to readily withhold or mask nondisclosable data.

(2) In planning or implementing electronic access and two-way electronic interaction and delivery technologies, state agencies and local governments are encouraged to:

(a) Increase their capabilities to receive information electronically from the public and to transmit forms, applications, and other communications and transactions electronically;

(b) Use technologies allowing public access throughout the state that allow continuous access twenty-four hours a day, seven days per week, involve little or no cost to access, and are capable of being used by persons without extensive technological ability; and

(c) Consider and incorporate wherever possible ease of access to electronic technologies by persons with disabilities. In planning and implementing new public electronic access projects, agencies should consult with people who have disabilities, with disability access experts, and the general public.

(3) The final report of the public information access policy task force, "Encouraging Widespread Public Electronic Access to Public Records and Information Held by State and Local Governments," shall serve as a major resource for state agencies and local governments in planning and providing increased access to electronic public records and information. [1996 c 171 § 5. Formerly RCW 43.105.270.]

Additional notes found at www.leg.wa.gov

43.41A.130 Electronic access to public records—Costs and fees. Funding to meet the costs of providing access, including the building of the necessary information systems, the digitizing of information, developing the ability to mask nondisclosable information, and maintenance and upgrade of information access systems should come primarily from state and local appropriations, federal dollars, grants, private funds, cooperative ventures among governments, nonexclusive licensing, and public/private partnerships. Agencies should not offer customized electronic access services as the primary way of responding to requests or as a primary source of revenue. Fees for staff time to respond to requests, and other direct costs may be included in costs of providing customized access.

Agencies and local governments are encouraged to pool resources and to form cooperative ventures to provide electronic access to government records and information. State agencies are encouraged to seek federal and private grants for projects that provide increased efficiency and improve government delivery of information and services. [1996 c 171 § 12. Formerly RCW 43.105.280.]

Additional notes found at www.leg.wa.gov

43.41A.135 Electronic access to public records—Government information locator service pilot project. The state library, with the assistance of the office and the state archives, shall establish a pilot project to design and test an electronic information locator system, allowing members of the public to locate and access electronic public records. In designing the system, the following factors shall be considered: (1) Ease of operation by citizens; (2) access through multiple technologies, such as direct dial and toll-free numbers, kiosks, and the internet; (3) compatibility with private online services; and (4) capability of expanding the electronic public records included in the system. The pilot project may restrict the type and quality of electronic public records that are included in the system to test the feasibility of making electronic public records and information widely available to the public. [2011 1st sp.s. c 43 § 724; 1996 c 171 § 13. Formerly RCW 43.105.290.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.41A.140 Accuracy, integrity, and privacy of records and information. (Effective until January 1, 2012.) State agencies and local governments that collect and enter information concerning individuals into electronic records and information systems that will be widely accessible by the public under *RCW 42.17.020 shall ensure the accuracy of this information to the extent possible. To the

extent possible, information must be collected directly from, and with the consent of, the individual who is the subject of the data. Agencies shall establish procedures for correcting inaccurate information, including establishing mechanisms for individuals to review information about themselves and recommend changes in information they believe to be inaccurate. The inclusion of personal information in electronic public records that is widely available to the public should include information on the date when the database was created or most recently updated. If personally identifiable information is included in electronic public records that are made widely available to the public, agencies must follow retention and archival schedules in accordance with chapter 40.14 RCW, retaining personally identifiable information only as long as needed to carry out the purpose for which it was collected. [1996 c 171 § 15. Formerly RCW 43.105.310.]

***Reviser's note:** RCW 42.17.020 was recodified as RCW 42.17A.005 pursuant to 2010 c 204 § 1102, effective January 1, 2012.

Additional notes found at www.leg.wa.gov

43.41A.140 Accuracy, integrity, and privacy of records and information. (Effective January 1, 2012.) State agencies and local governments that collect and enter information concerning individuals into electronic records and information systems that will be widely accessible by the public under RCW 42.56.010 shall ensure the accuracy of this information to the extent possible. To the extent possible, information must be collected directly from, and with the consent of, the individual who is the subject of the data. Agencies shall establish procedures for correcting inaccurate information, including establishing mechanisms for individuals to review information about themselves and recommend changes in information they believe to be inaccurate. The inclusion of personal information in electronic public records that is widely available to the public should include information on the date when the database was created or most recently updated. If personally identifiable information is included in electronic public records that are made widely available to the public, agencies must follow retention and archival schedules in accordance with chapter 40.14 RCW, retaining personally identifiable information only as long as needed to carry out the purpose for which it was collected. [2011 c 60 § 39; 1996 c 171 § 15. Formerly RCW 43.105.310.]

Effective date—2011 c 60: See RCW 42.17A.919.

Additional notes found at www.leg.wa.gov

43.41A.150 Use of state data center—Business plan and migration schedule for state agencies—Exceptions. (1) Except as provided by subsection (2) of this section, state agencies shall locate all existing and new servers in the state data center.

(2) Agencies with a service requirement that requires servers to be located outside the state data center must receive a waiver from the office. Waivers must be based upon written justification from the requesting agency citing specific service or performance requirements for locating servers outside the state's common platform.

(3) The office, in consultation with the office of financial management, shall continue to develop the business plan and

migration schedule for moving all state agencies into the state data center.

(4) The legislature and the judiciary, which are constitutionally recognized as separate branches of government, may enter into an interagency agreement with the office to migrate its servers into the state data center.

(5) This section does not apply to institutions of higher education. [2011 1st sp.s. c 43 § 735.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.152 Consolidated technology services agency—Use by state agencies—"Utility-based infrastructure services" defined. (1) The office shall conduct a needs assessment and develop a migration strategy to ensure that, over time, all state agencies are moving towards using the consolidated technology services agency established in RCW 43.105.047 as their central service provider for all utility-based infrastructure services, including centralized PC and infrastructure support. Agency specific application services shall remain managed within individual agencies.

(2) The office shall develop short-term and long-term objectives as part of the migration strategy.

(3) For the purposes of this section, "utility-based infrastructure services" includes personal computer and portable device support, servers and server administration, security administration, network administration, telephony, e-mail, and other information technology services commonly utilized by state agencies.

(4) This section does not apply to institutions of higher education. [2011 1st sp.s. c 43 § 736.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41A.900 Transfer of certain powers, duties, and functions of the department of information services. (1) Those powers, duties, and functions of the department of information services being transferred to the consolidated technology services agency as set forth in *sections 801 through 816, chapter 43, Laws of 2011 1st sp. sess. are hereby transferred to the consolidated technology services agency.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of information services shall be delivered to the custody of the consolidated technology services agency. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of information services shall be made available to the consolidated technology services agency. All funds, credits, or other assets held by the department of information services shall be assigned to the consolidated technology services agency.

(b) Any appropriations made to the department of information services shall, on October 1, 2011, be transferred and credited to the consolidated technology services agency.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make

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a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the department of information services pertaining to the powers, duties, and functions transferred shall be continued and acted upon by the consolidated technology services agency. All existing contracts and obligations shall remain in full force and shall be performed by the consolidated technology services agency.

(4) The transfer of the powers, duties, functions, and personnel of the department of information services shall not affect the validity of any act performed before October 1, 2011.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(6) All employees of the department of information services engaged in performing the powers, functions, and duties transferred to the consolidated technology services agency are transferred to the consolidated technology services agency. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the consolidated technology services agency to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service law.

(7) Unless or until modified by the public employment relations commission pursuant to RCW 41.80.911:

(a) The portions of the bargaining units of employees at the department of information services existing on October 1, 2011, shall be considered appropriate units at the consolidated technology services agency and will be so certified by the public employment relations commission.

(b) The exclusive bargaining representatives recognized as representing the portions of the bargaining units of employees at the department of information services existing on October 1, 2011, shall continue as the exclusive bargaining representatives of the transferred bargaining units without the necessity of an election. [2011 1st sp.s. c 43 § 1009.]

Reviser's note: *(1) Sections 815 and 816, chapter 43, Laws of 2011 1st sp. sess. were vetoed.

(2) This section was directed to be codified in chapter 43.330 RCW, but placement in chapter 43.41A RCW appears to be more appropriate.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Chapter 43.42 RCW

OFFICE OF REGULATORY ASSISTANCE

Sections

43.42.010 Office created—Appointment of director—Duties.

43.42.010 Office created—Appointment of director—Duties. (1) The office of regulatory assistance is created in the office of financial management and must be administered by the office of the governor to help improve

the regulatory system and assist citizens, businesses, and project proponents.

(2) The governor must appoint a director. The director may employ a deputy director and a confidential secretary and such staff as are necessary, or contract with another state agency pursuant to chapter 39.34 RCW for support in carrying out the purposes of this chapter.

(3) The office must offer to:

(a) Act as the central point of contact for the project proponent in communicating about defined issues;

(b) Conduct project scoping as provided in RCW 43.42.050;

(c) Verify that the project proponent has all the information needed to correctly apply for all necessary permits;

(d) Provide general coordination services;

(e) Coordinate the efficient completion among participating agencies of administrative procedures, such as collecting fees or providing public notice;

(f) Maintain contact with the project proponent and the permit agencies to promote adherence to agreed schedules;

(g) Assist in resolving any conflict or inconsistency among permit requirements and conditions;

(h) Coordinate, to the extent practicable, with relevant federal permit agencies and tribal governments;

(i) Facilitate meetings;

(j) Manage a fully coordinated permit process, as provided in RCW 43.42.060;

(k) Help local jurisdictions comply with the requirements of chapter 36.70B RCW by providing information about best permitting practices methods to improve communication with, and solicit early involvement of, state agencies when needed; and

(l) Maintain and furnish information as provided in RCW 43.42.040.

(4) The office must provide the following by September 1, 2009, and biennially thereafter, to the governor and the appropriate committees of the legislature:

(a) A performance report including:

(i) Information regarding use of the office's voluntary cost-reimbursement services as provided in RCW 43.42.070;

(ii) The number and type of projects where the office provided services and the resolution provided by the office on any conflicts that arose on such projects;

(iii) The agencies involved on specific projects;

(iv) Specific information on any difficulty encountered in provision of services, implementation of programs or processes, or use of tools; and

(v) Trend reporting that allows comparisons between statements of goals and performance targets and the achievement of those goals and targets; and

(b) Recommendations on system improvements including recommendations regarding:

(i) Measurement of overall system performance;

(ii) Changes needed to make cost reimbursement, a fully coordinated permit process, multiagency permitting teams, and other processes effective; and

(iii) Resolving any conflicts or inconsistencies arising from differing statutory or regulatory authorities, roles and missions of agencies, timing and sequencing of permitting and procedural requirements as identified by the office in the

course of its duties. [2011 c 149 § 2; 2009 c 97 § 4. Prior: 2007 c 231 § 5; 2007 c 94 § 2; 2003 c 71 § 2; 2002 c 153 § 2.]

Effective date—2011 c 149: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 29, 2011." [2011 c 149 § 4.]

Findings—Recommendations—Reports encouraged—2007 c 231: See note following RCW 43.155.070.

Chapter 43.43 RCW

WASHINGTON STATE PATROL

Sections

43.43.120	Patrol retirement system—Definitions.
43.43.400	Aquatic invasive species enforcement account—Aquatic invasive species enforcement program for recreational and commercial watercraft—Reports to the legislature.
43.43.540	Sex offenders and kidnapping offenders—Central registry—Reimbursement to counties.
43.43.7541	DNA identification system—Collection of biological samples—Fee.
43.43.830	Background checks—Access to children or vulnerable persons—Definitions.
43.43.832	Background checks—Disclosure of information—Sharing of criminal background information by health care facilities.
43.43.837	Fingerprint-based background checks—Requirements for applicants and service providers—Shared background checks—Fees—Rules to establish financial responsibility.
43.43.944	Fire service training account.

43.43.120 Patrol retirement system—Definitions. As used in this section and RCW 43.43.130 through 43.43.320, unless a different meaning is plainly required by the context:

(1) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality table as may be adopted and such interest rate as may be determined by the director.

(2) "Annual increase" means as of July 1, 1999, seventy-seven cents per month per year of service which amount shall be increased each subsequent July 1st by three percent, rounded to the nearest cent.

(3)(a) "Average final salary," for members commissioned prior to January 1, 2003, shall mean the average monthly salary received by a member during the member's last two years of service or any consecutive two-year period of service, whichever is the greater, as an employee of the Washington state patrol; or if the member has less than two years of service, then the average monthly salary received by the member during the member's total years of service.

(b) "Average final salary," for members commissioned on or after January 1, 2003, shall mean the average monthly salary received by a member for the highest consecutive sixty service credit months; or if the member has less than sixty months of service, then the average monthly salary received by the member during the member's total months of service.

(c) In calculating average final salary under (a) or (b) of this subsection, the department of retirement systems shall include:

(i) Any compensation forgone by the member during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to December 11, 2010, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the chief; and

(ii) Any compensation forgone by a member during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the chief. Reductions to current pay shall not include elimination of previously agreed upon future salary reductions.

(4) "Beneficiary" means any person in receipt of retirement allowance or any other benefit allowed by this chapter.

(5)(a) "Cadet," for a person who became a member of the retirement system after June 12, 1980, is a person who has passed the Washington state patrol's entry-level oral, written, physical performance, and background examinations and is, thereby, appointed by the chief as a candidate to be a commissioned officer of the Washington state patrol.

(b) "Cadet," for a person who became a member of the retirement system before June 12, 1980, is a trooper cadet, patrol cadet, or employee of like classification, employed for the express purpose of receiving the on-the-job training required for attendance at the state patrol academy and for becoming a commissioned trooper. "Like classification" includes: Radio operators or dispatchers; persons providing security for the governor or legislature; patrol officers; drivers' license examiners; weighmasters; vehicle safety inspectors; central wireless operators; and warehouse workers.

(6) "Contributions" means the deduction from the compensation of each member in accordance with the contribution rates established under chapter 41.45 RCW.

(7) "Current service" shall mean all service as a member rendered on or after August 1, 1947.

(8) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(9) "Director" means the director of the department of retirement systems.

(10) "Domestic partners" means two adults who have registered as domestic partners under RCW 26.60.040.

(11) "Employee" means any commissioned employee of the Washington state patrol.

(12) "Insurance commissioner" means the insurance commissioner of the state of Washington.

(13) "Lieutenant governor" means the lieutenant governor of the state of Washington.

(14) "Member" means any person included in the membership of the retirement fund.

(15) "Plan 2" means the Washington state patrol retirement system plan 2, providing the benefits and funding provisions covering commissioned employees who first become members of the system on or after January 1, 2003.

(16) "Prior service" shall mean all services rendered by a member to the state of Washington, or any of its political subdivisions prior to August 1, 1947, unless such service has been credited in another public retirement or pension system operating in the state of Washington.

(17) "Regular interest" means interest compounded annually at such rates as may be determined by the director.

(18) "Retirement board" means the board provided for in this chapter.

(19) "Retirement fund" means the Washington state patrol retirement fund.

(20) "Retirement system" means the Washington state patrol retirement system.

(21)(a) "Salary," for members commissioned prior to July 1, 2001, shall exclude any overtime earnings related to RCW 47.46.040, or any voluntary overtime, earned on or after July 1, 2001.

(b) "Salary," for members commissioned on or after July 1, 2001, shall exclude any overtime earnings related to RCW 47.46.040 or any voluntary overtime, lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, holiday pay, or any form of severance pay.

(22) "Service" shall mean services rendered to the state of Washington or any political subdivisions thereof for which compensation has been paid. Full time employment for seventy or more hours in any given calendar month shall constitute one month of service. An employee who is reinstated in accordance with RCW 43.43.110 shall suffer no loss of service for the period reinstated subject to the contribution requirements of this chapter. Only months of service shall be counted in the computation of any retirement allowance or other benefit provided for herein. Years of service shall be determined by dividing the total number of months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefit.

(23) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(24) "State treasurer" means the treasurer of the state of Washington.

Unless the context expressly indicates otherwise, words importing the masculine gender shall be extended to include the feminine gender and words importing the feminine gender shall be extended to include the masculine gender. [2011 1st sp.s. c 5 § 6; 2010 2nd sp.s. c 1 § 907; 2010 1st sp.s. c 32 § 9. Prior: 2009 c 549 § 5124; 2009 c 522 § 1; 2001 c 329 § 3; 1999 c 74 § 1; 1983 c 81 § 1; 1982 1st ex.s. c 52 § 24; 1980 c 77 § 1; 1973 1st ex.s. c 180 § 1; 1969 c 12 § 1; 1965 c 8 § 43.43.120; prior: 1955 c 244 § 1; 1953 c 262 § 1; 1951 c 140 § 1; 1947 c 250 § 1; Rem. Supp. 1947 § 6362-81.]

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Effective date—2001 c 329: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 329 § 14.]

Additional notes found at www.leg.wa.gov

43.43.400 Aquatic invasive species enforcement account—Aquatic invasive species enforcement program for recreational and commercial watercraft—Reports to the legislature. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "Aquatic invasive species" means any invasive, prohibited, regulated, unregulated, or unlisted aquatic animal or plant species as defined under RCW 77.08.010 [(3),] (28),

(40), (44), (58), and (59), aquatic noxious weeds as defined under RCW 17.26.020(5)(c), and aquatic nuisance species as defined under RCW 77.60.130(1).

(b) "Recreational and commercial watercraft" includes the boat, as well as equipment used to transport the boat, and any auxiliary equipment such as attached or detached outboard motors.

(2) The aquatic invasive species enforcement account is created in the state treasury. Moneys directed to the account from RCW 88.02.640 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(3) Funds in the aquatic invasive species enforcement account may be appropriated to the Washington state patrol and the department of fish and wildlife to develop an aquatic invasive species enforcement program for recreational and commercial watercraft, which includes equipment used to transport the watercraft and auxiliary equipment such as attached or detached outboard motors. Funds must be expended as follows:

(a) By the Washington state patrol, to inspect recreational and commercial watercraft that are required to stop at port of entry weigh stations managed by the Washington state patrol. The watercraft must be inspected for the presence of aquatic invasive species; and

(b) By the department of fish and wildlife to:

(i) Establish random check stations, to inspect recreational and commercial watercraft as provided for in RCW 77.12.879(3);

(ii) Inspect or delegate inspection of recreational and commercial watercraft. If the department conducts the inspection, there will be no cost to the person requesting the inspection;

(iii) Provide training to all department employees that are deployed in the field to inspect recreational and commercial watercraft; and

(iv) Provide an inspection receipt verifying that the watercraft is not contaminated after the watercraft has been inspected at a check station or has been inspected at the request of the owner of the recreational or commercial watercraft. The inspection receipt is valid until the watercraft is used again.

(4) The Washington state patrol and the department of fish and wildlife shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007. [2011 c 171 § 8; 2011 c 169 § 3; 2007 c 350 § 1; 2005 c 464 § 5.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—Intent—2005 c 464: See note following RCW 88.02.560.

43.43.540 Sex offenders and kidnapping offenders—Central registry—Reimbursement to counties. (1) The county sheriff shall forward registration information, photographs, and fingerprints obtained pursuant to RCW 9A.44.130, including the sex offender's risk level classification and any notice of change of address, to the Washington state patrol within five working days.

(2) Upon implementation of RCW 4.24.550(5)(a), the Washington state patrol shall maintain a central registry of sex offenders and kidnapping offenders required to register under RCW 9A.44.130 and shall adopt rules consistent with chapters 10.97, 10.98, and 43.43 RCW as are necessary to carry out the purposes of RCW 9A.44.130, 9A.44.140, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The Washington state patrol shall reimburse the counties for the costs of processing the offender registration, including taking the offender's fingerprints and photograph. [2011 c 337 § 8; 2006 c 136 § 1; 2002 c 118 § 2; 1998 c 220 § 4; 1997 c 113 § 6; 1990 c 3 § 403.]

Reviser's note: The definitions in RCW 9A.44.128 apply to this section.

Conflict with federal requirements—2002 c 118: See note following RCW 4.24.550.

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

Sex offense and kidnapping offense defined: RCW 9A.44.128.

Additional notes found at www.leg.wa.gov

43.43.7541 DNA identification system—Collection of biological samples—Fee. Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars. The fee is a court-ordered legal financial obligation as defined in RCW 9.94A.030 and other applicable law. For a sentence imposed under chapter 9.94A RCW, the fee is payable by the offender after payment of all other legal financial obligations included in the sentence has been completed. For all other sentences, the fee is payable by the offender in the same manner as other assessments imposed. The clerk of the court shall transmit eighty percent of the fee collected to the state treasurer for deposit in the state DNA database account created under RCW 43.43.7532, and shall transmit twenty percent of the fee collected to the agency responsible for collection of a biological sample from the offender as required under RCW 43.43.754. [2011 c 125 § 1; 2008 c 97 § 3; 2002 c 289 § 4.]

Severability—Effective date—2002 c 289: See notes following RCW 43.43.753.

43.43.830 Background checks—Access to children or vulnerable persons—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.845.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults, juveniles, or children, or which provides child day care, early learning, or early childhood education services.

(2) "Applicant" means:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization;

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or

fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults;

(c) Any prospective adoptive parent, as defined in RCW 26.33.020; or

(d) Any prospective custodian in a nonparental custody proceeding under chapter 26.10 RCW.

(3) "Business or organization" means a person, business, or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, houses, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, or that provides child day care, early learning, or early learning childhood education services, including but not limited to public housing authorities, school districts, and educational service districts.

(4) "Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

(5) "Conviction record" means "conviction record" information as defined in RCW 10.97.030 and 10.97.050 relating to a crime committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(6) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnapping; first, second, or third degree assault; first, second, or third degree assault of a child; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; endangerment with a controlled substance; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; first or second degree custodial sexual misconduct; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; commercial sexual abuse of a minor; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault;

violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future.

(7) "Crimes relating to drugs" means a conviction of a crime to manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance.

(8) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.

(9) "Financial exploitation" means "financial exploitation" as defined in RCW 74.34.020.

(10) "Peer counselor" means a nonprofessional person who has equal standing with another person, providing advice on a topic about which the nonprofessional person is more experienced or knowledgeable, and who is a counselor for a peer counseling program that contracts with or is otherwise approved by the department, another state or local agency, or the court.

(11) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.

With regard to peer counselors, "unsupervised" does not include incidental contact with children under age sixteen at the location at which the peer counseling is taking place. "Incidental contact" means minor or casual contact with a child in an area accessible to and within visual or auditory range of others. It could include passing a child while walking down a hallway but would not include being alone with a child for any period of time in a closed room or office.

(12) "Vulnerable adult" means "vulnerable adult" as defined in chapter 74.34 RCW, except that for the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves. [2011 c 253 § 5; 2007 c 387 § 9; 2005 c 421 § 1; 2003 c 105 § 5; 2002 c 229 § 3; 1999 c 45 § 5; 1998 c 10 § 1; 1996 c 178 § 12; 1995 c 250 § 1; 1994 c 108 § 1; 1992 c 145 § 16. Prior: 1990 c 146 § 8; 1990 c 3 § 1101; prior: 1989 c 334 § 1; 1989 c 90 § 1; 1987 c 486 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2002 c 229: See note following RCW 9A.42.100.

At-risk children volunteer program: RCW 43.150.080.

State hospitals: RCW 72.23.035.

Additional notes found at www.leg.wa.gov

43.43.832 Background checks—Disclosure of information—Sharing of criminal background information by health care facilities. (1) The legislature finds that businesses and organizations providing services to children, developmentally disabled persons, and vulnerable adults need adequate information to determine which employees or

licensees to hire or engage. The legislature further finds that many developmentally disabled individuals and vulnerable adults desire to hire their own employees directly and also need adequate information to determine which employees or licensees to hire or engage. Therefore, the Washington state patrol identification and criminal history section shall disclose, upon the request of a business or organization as defined in RCW 43.43.830, a developmentally disabled person, or a vulnerable adult as defined in RCW 43.43.830 or his or her guardian, an applicant's conviction record as defined in chapter 10.97 RCW.

(2) The legislature also finds that the Washington professional educator standards board may request of the Washington state patrol criminal identification system information regarding a certificate applicant's conviction record under subsection (1) of this section.

(3) The legislature also finds that law enforcement agencies, the office of the attorney general, prosecuting authorities, and the department of social and health services may request this same information to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse.

(4) The legislature further finds that the secretary of the department of social and health services must establish rules and set standards to require specific action when considering the information listed in subsection (1) of this section, and when considering additional information including but not limited to civil adjudication proceedings as defined in RCW 43.43.830 and any out-of-state equivalent, in the following circumstances:

(a) When considering persons for state employment in positions directly responsible for the supervision, care, or treatment of children, vulnerable adults, or individuals with mental illness or developmental disabilities;

(b) When considering persons for state positions involving unsupervised access to vulnerable adults to conduct comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(c) When licensing agencies or facilities with individuals in positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to agencies or facilities licensed under chapter 74.15 or 18.51 RCW;

(d) When contracting with individuals or businesses or organizations for the care, supervision, case management, or treatment, including peer counseling, of children, developmentally disabled persons, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;

(e) When individual providers are paid by the state or providers are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW.

(5) The director of the department of early learning shall investigate the conviction records, pending charges, and

other information including civil adjudication proceeding records of current employees and of any person actively being considered for any position with the department who will or may have unsupervised access to children, or for state positions otherwise required by federal law to meet employment standards. "Considered for any position" includes decisions about (a) initial hiring, layoffs, reallocations, transfers, promotions, or demotions, or (b) other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer.

(6) The director of the department of early learning shall adopt rules and investigate conviction records, pending charges, and other information including civil adjudication proceeding records, in the following circumstances:

(a) When licensing or certifying agencies with individuals in positions that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood education services, including but not limited to licensees, agency staff, interns, volunteers, contracted providers, and persons living on the premises who are sixteen years of age or older;

(b) When authorizing individuals who will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood learning education services in licensed or certified agencies, including but not limited to licensees, agency staff, interns, volunteers, contracted providers, and persons living on the premises who are sixteen years of age or older;

(c) When contracting with any business or organization for activities that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood learning education services;

(d) When establishing the eligibility criteria for individual providers to receive state paid subsidies to provide child day care or early learning services that will or may involve unsupervised access to children.

(7) Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis pending completion of the state background investigation. Whenever a national criminal record check through the federal bureau of investigation is required by state law, a person may be employed or engaged as a volunteer or independent contractor on a conditional basis pending completion of the national check. The Washington personnel resources board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees.

(8)(a) For purposes of facilitating timely access to criminal background information and to reasonably minimize the number of requests made under this section, recognizing that certain health care providers change employment frequently, health care facilities may, upon request from another health care facility, share copies of completed criminal background inquiry information.

(b) Completed criminal background inquiry information may be shared by a willing health care facility only if the following conditions are satisfied: The licensed health care facility sharing the criminal background inquiry information is reasonably known to be the person's most recent employer,

no more than twelve months has elapsed from the date the person was last employed at a licensed health care facility to the date of their current employment application, and the criminal background information is no more than two years old.

(c) If criminal background inquiry information is shared, the health care facility employing the subject of the inquiry must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in RCW 43.43.842 since the completion date of the most recent criminal background inquiry.

(d) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, subsequent to the completion date of their most recent criminal background inquiry, shall be prohibited from relying on the applicant's previous employer's criminal background inquiry information. A new criminal background inquiry shall be requested pursuant to RCW 43.43.830 through 43.43.842.

(e) Health care facilities that share criminal background inquiry information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this subsection.

(f) Health care facilities shall transmit and receive the criminal background inquiry information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(g) For the purposes of this subsection, "health care facility" means a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW. [2011 c 253 § 6; 2007 c 387 § 10; 2006 c 263 § 826; 2005 c 421 § 2; 2000 c 87 § 1; 1997 c 392 § 524; 1995 c 250 § 2; 1993 c 281 § 51; 1990 c 3 § 1102. Prior: 1989 c 334 § 2; 1989 c 90 § 2; 1987 c 486 § 2.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Additional notes found at www.leg.wa.gov

43.43.837 Fingerprint-based background checks—Requirements for applicants and service providers—Shared background checks—Fees—Rules to establish financial responsibility. (1) Except as provided in subsection (2) of this section, in order to determine the character, competence, and suitability of any applicant or service provider to have unsupervised access, the secretary may require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation at any time, but shall require a fingerprint-based background check when the applicant or service provider has resided in the state less than three consecutive years before application, and:

(a) Is an applicant or service provider providing services to children or people with developmental disabilities under RCW 74.15.030;

(b) Is an individual residing in an applicant or service provider's home, facility, entity, agency, or business or who

is authorized by the department to provide services to children or people with developmental disabilities under RCW 74.15.030; or

(c) Is an applicant or service provider providing in-home services funded by:

(i) Medicaid personal care under RCW 74.09.520;

(ii) Community options program entry system waiver services under RCW 74.39A.030;

(iii) Chore services under RCW 74.39A.110; or

(iv) Other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department.

(2) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 1, 2014, are subject to background checks under RCW 74.39A.055.

(3) To satisfy the shared background check requirements provided for in RCW 43.215.215 and 43.20A.710, the department of early learning and the department of social and health services shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow both departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. Neither department may share the federal background check results with any other state agency or person.

(4) The secretary shall require a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation when the department seeks to approve an applicant or service provider for a foster or adoptive placement of children in accordance with federal and state law.

(5) Any secure facility operated by the department under chapter 71.09 RCW shall require applicants and service providers to undergo a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation.

(6) Service providers and service provider applicants who are required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period as allowed under law or program rules when:

(a) A fingerprint-based background check is pending; and

(b) The applicant or service provider is not disqualified based on the immediate result of the background check.

(7) Fees charged by the Washington state patrol and the federal bureau of investigation for fingerprint-based background checks shall be paid by the department for applicants or service providers providing:

(a) Services to people with a developmental disability under RCW 74.15.030;

(b) In-home services funded by medicaid personal care under RCW 74.09.520;

(c) Community options program entry system waiver services under RCW 74.39A.030;

(d) Chore services under RCW 74.39A.110;

(e) Services under other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department;

(f) Services in, or to residents of, a secure facility under RCW 71.09.115; and

(g) Foster care as required under RCW 74.15.030.

(8) Service providers licensed under RCW 74.15.030 must pay fees charged by the Washington state patrol and the federal bureau of investigation for conducting fingerprint-based background checks.

(9) Children's administration service providers licensed under RCW 74.15.030 may not pass on the cost of the background check fees to their applicants unless the individual is determined to be disqualified due to the background information.

(10) The department shall develop rules identifying the financial responsibility of service providers, applicants, and the department for paying the fees charged by law enforcement to roll, print, or scan fingerprints-based for the purpose of a Washington state patrol or federal bureau of investigation fingerprint-based background check.

(11) For purposes of this section, unless the context plainly indicates otherwise:

(a) "Applicant" means a current or prospective department or service provider employee, volunteer, student, intern, researcher, contractor, or any other individual who will or may have unsupervised access because of the nature of the work or services he or she provides. "Applicant" includes but is not limited to any individual who will or may have unsupervised access and is:

(i) Applying for a license or certification from the department;

(ii) Seeking a contract with the department or a service provider;

(iii) Applying for employment, promotion, reallocation, or transfer;

(iv) An individual that a department client or guardian of a department client chooses to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered; or

(v) A department applicant who will or may work in a department-covered position.

(b) "Authorized" means the department grants an applicant, home, or facility permission to:

(i) Conduct licensing, certification, or contracting activities;

(ii) Have unsupervised access to vulnerable adults, juveniles, and children;

(iii) Receive payments from a department program; or

(iv) Work or serve in a department-covered position.

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

(d) "Secretary" means the secretary of the department of social and health services.

(e) "Secure facility" has the meaning provided in RCW 71.09.020.

(f) "Service provider" means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or regulated by, receive payment from, or have contracts or agreements with the department to provide services to vulnerable adults, juveniles, or children. "Service provider" includes individuals whom a department client or guardian of a department client may choose to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive

payment from the department for services rendered. "Service provider" does not include those certified under chapter 70.96A RCW. [2011 1st sp.s. c 31 § 17; 2011 c 253 § 2; 2009 c 580 § 6; 2007 c 387 § 1.]

43.43.944 Fire service training account. (1) The fire service training account is hereby established in the state treasury. The fund shall consist of:

(a) All fees received by the Washington state patrol for fire service training;

(b) All grants and bequests accepted by the Washington state patrol under RCW 43.43.940;

(c) Twenty percent of all moneys received by the state on fire insurance premiums; and

(d) General fund—state moneys appropriated into the account by the legislature.

(2) Moneys in the account may be appropriated only for fire service training. The state patrol may use amounts appropriated from the fire service training account under this section to contract with the Washington state firefighters apprenticeship trust for the operation of the firefighter joint apprenticeship training program. The contract may call for payments on a monthly basis. During the 2009-2011 fiscal biennium, the legislature may appropriate funds from this account for school fire prevention activities within the Washington state patrol and for repairs of the burn building. During the 2011-2013 fiscal biennium, the legislature may appropriate funds from this account for school fire prevention activities within the Washington state patrol, and for pre-design and repairs of the burn building.

(3) Any general fund—state moneys appropriated into the account shall be allocated solely to the firefighter joint apprenticeship training program. The Washington state patrol may contract with outside entities for the administration and delivery of the firefighter joint apprenticeship training program. [2011 1st sp.s. c 48 § 7026; 2010 1st sp.s. c 37 § 923; 2007 c 520 § 6034; 2007 c 290 § 1; 2005 c 518 § 929; 2003 1st sp.s. c 25 § 919; 1999 c 117 § 2; 1995 c 369 § 21; 1986 c 266 § 61. Formerly RCW 43.63A.370.]

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Part headings not law—Severability—Effective dates—2007 c 520: See notes following RCW 43.19.125.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Additional notes found at www.leg.wa.gov

Chapter 43.52A RCW

ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL—STATE'S MEMBERS

Sections

43.52A.030 Appointment of members. (*Effective January 1, 2012.*)

43.52A.030 Appointment of members. (*Effective January 1, 2012.*) The governor, with the consent of the senate, shall appoint two residents of Washington state to the

council pursuant to the act. These persons shall undertake the functions and duties of members of the council as specified in the act and in appropriate state law. Upon appointment by the governor to the council, the nominee shall make available to the senate such disclosure information as is requested for the confirmation process, including that required in RCW 42.17A.710. [2011 c 60 § 36; 1984 c 34 § 8; 1981 c 14 § 3.]

Effective date—2011 c 60: See RCW 42.17A.919.

Chapter 43.60A RCW

DEPARTMENT OF VETERANS AFFAIRS

Sections

- 43.60A.152 Collaboration with departments implementing the Washington conservation corps.
 43.60A.175 Receipt of gifts, grants, or endowments—Rule-making authority. (*Effective January 1, 2012.*)

43.60A.152 Collaboration with departments implementing the Washington conservation corps. The department shall collaborate with the department of ecology and the department of natural resources and any of its partnering agencies in implementing the Washington conservation corps, created in chapter 43.220 RCW, to maximize the utilization of both conservation corps programs. These agencies shall work together to identify stewardship and maintenance projects on public lands that are suitable for work by veterans conservation corps enrollees. The department may expend funds appropriated to the veterans conservation corps program to defray the costs of education, training, and certification associated with the enrollees participating in such projects. [2011 c 20 § 13; 2007 c 451 § 5.]

Findings—Intent—2011 c 20: See note following RCW 43.220.020.

Intent—Application—2011 c 20: See RCW 43.220.905.

43.60A.175 Receipt of gifts, grants, or endowments—Rule-making authority. (*Effective January 1, 2012.*) (1) The department may receive gifts, grants, or endowments from public or private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the defenders' fund and the competitive grant program and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW 42.17A.560.

(2) The department may adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of RCW 43.60A.160 through 43.60A.185.

(3) The department may perform all acts and functions as necessary or convenient to carry out the powers expressly granted or implied under chapter 343, Laws of 2006. [2011 c 60 § 37; 2006 c 343 § 6.]

Sunset Act application: See note following RCW 43.60A.160.

Effective date—2011 c 60: See RCW 42.17A.919.

Findings—2006 c 343: See note following RCW 43.60A.160.

Chapter 43.63A RCW

DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

Sections

- 43.63A.125 Nonresidential social services facilities—Building communities fund program—Assistance to nonprofit organizations—Competitive process—Recommendations to legislature for funding.
 43.63A.485 Manufactured housing—Violations—Fines. (*Contingent expiration date.*)
 43.63A.550 Growth management—Inventorying and collecting data.

43.63A.125 Nonresidential social services facilities—Building communities fund program—Assistance to nonprofit organizations—Competitive process—Recommendations to legislature for funding. (1) The department shall establish the building communities fund program. Under the program, capital and technical assistance grants may be made to nonprofit organizations for acquiring, constructing, or rehabilitating facilities used for the delivery of nonresidential community services, including social service centers and multipurpose community centers, including those serving a distinct or ethnic population. Such facilities must be located in a distressed community or serve a substantial number of low-income or disadvantaged persons.

(2) The department shall establish a competitive process to solicit, evaluate, and rank applications for the building communities fund program as follows:

(a) The department shall conduct a statewide solicitation of project applications from nonprofit organizations.

(b) The department shall evaluate and rank applications in consultation with a citizen advisory committee using objective criteria. To be considered qualified, applicants must demonstrate that the proposed project:

(i) Will increase the range, efficiency, or quality of the services provided to citizens;

(ii) Will be located in a distressed community or will serve a substantial number of low-income or disadvantaged persons;

(iii) Will offer three or more distinct activities that meet a single community service objective or offer a diverse set of activities that meet multiple community service objectives, including but not limited to: Providing social services; expanding employment opportunities for or increasing the employability of community residents; or offering educational or recreational opportunities separate from the public school system or private schools, as long as recreation is not the sole purpose of the facility;

(iv) Reflects a long-term vision for the development of the community, shared by residents, businesses, leaders, and partners;

(v) Requires state funding to accomplish a discrete, usable phase of the project;

(vi) Is ready to proceed and will make timely use of the funds;

(vii) Is sponsored by one or more entities that have the organizational and financial capacity to fulfill the terms of the grant agreement and to maintain the project into the future;

(viii) Fills an unmet need for community services;

(ix) Will achieve its stated objectives; and

(x) Is a community priority as shown through tangible commitments of existing or future assets made to the project by community residents, leaders, businesses, and government partners.

(c) The evaluation and ranking process shall also include an examination of existing assets that applicants may apply to projects. Grant assistance under this section shall not exceed twenty-five percent of the total cost of the project, except, under exceptional circumstances, the department may reduce the amount of nonstate match required. No more than ten percent of the total granted amount may be awarded to qualified eligible projects that meet the definition of exceptional circumstances defined in this subsection. For purposes of this subsection, exceptional circumstances include but are not limited to: Natural disasters affecting projects; emergencies beyond an applicant's control, such as a fire or an unanticipated loss of a lease where services are currently provided; or a delay that could result in a threat to public health or safety. The nonstate portion of the total project cost may include cash, the value of real property when acquired solely for the purpose of the project, and in-kind contributions.

(d) The department may not set a monetary limit to funding requests.

(3) The department shall submit biennially to the governor and the legislature in the department's capital budget request a ranked list of the qualified eligible projects for which applications were received. The list must include a description of each project, its total cost, and the amount of state funding requested. The appropriate fiscal committees of the legislature shall use this list to determine building communities fund projects that may receive funding in the capital budget. The total amount of state capital funding available for all projects on the biennial list shall be determined by the capital budget beginning with the 2009-2011 biennium and thereafter. In addition, if cash funds have been appropriated, up to three million dollars may be used for technical assistance grants. The department shall not sign contracts or otherwise financially obligate funds under this section until the legislature has approved a specific list of projects.

(4) In addition to the list of ranked qualified eligible projects, the department shall submit to the appropriate fiscal committees of the legislature a summary report that describes the solicitation and evaluation processes, including but not limited to the number of applications received, the total amount of funding requested, issues encountered, if any, and any recommendations for process improvements.

(5) After the legislature has approved a specific list of projects in law, the department shall develop and manage appropriate contracts with the selected applicants; monitor project expenditures and grantee performance; report project and contract information; and exercise due diligence and other contract management responsibilities as required.

(6) In contracts for grants authorized under this section the department shall include provisions which require that capital improvements shall be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities shall be used for the express purpose of the grant. If the grantee is found to be out of compliance with provisions of the contract, the grantee shall repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington gen-

eral obligation bonds issued most closely to the date of authorization of the grant. [2011 1st sp.s. c 48 § 7027; 2008 c 327 § 15; 2006 c 371 § 233; 2005 c 160 § 1; 1999 c 295 § 3; 1997 c 374 § 2.]

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Part headings not law—Severability—Effective date—2006 c 371: See notes following RCW 43.325.040.

Findings—1997 c 374: "The legislature finds that nonprofit organizations provide a variety of social services that serve the needs of the citizens of Washington, including many services implemented under contract with state agencies. The legislature also finds that the efficiency and quality of these services may be enhanced by the provision of safe, reliable, and sound facilities, and that, in certain cases, it may be appropriate for the state to assist in the development of these facilities." [1997 c 374 § 1.]

43.63A.485 Manufactured housing—Violations—Fines. (Contingent expiration date.) (1) A person who violates any of the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426) applicable to RCW 43.22A.030, 43.63A.470, 43.63A.475, and 43.63A.480 or any rules adopted under RCW 43.22A.030, 43.63A.470, 43.63A.475, and 43.63A.480 is liable to the state of Washington for a civil penalty of not to exceed one thousand dollars for each such violation. Each violation of the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426) applicable to RCW 43.22A.030, 43.63A.470, 43.63A.475, and 43.63A.480 or any rules adopted under RCW 43.22A.030, 43.63A.470, 43.63A.475, and 43.63A.480, shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

(2) An individual or a director, officer, or agent of a corporation who knowingly and willfully violates any of the provisions of RCW 43.22A.030, 43.63A.470, 43.63A.475, and 43.63A.480 or any rules adopted under RCW 43.22A.030, 43.63A.470, 43.63A.475, and 43.63A.480, in a manner that threatens the health or safety of any purchaser, shall be fined not more than one thousand dollars or imprisoned up to three hundred sixty-four days, or both.

(3) Any legal fees, court costs, expert witness fees, and staff costs expended by the state in successfully pursuing violators of RCW 43.22A.030, 43.63A.470, 43.63A.475, and 43.63A.480 shall be reimbursed in full by the violators. [2011 c 96 § 29; 1993 c 124 § 4.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Contingent expiration date—RCW 43.22A.030 and 43.63A.470 through 43.63A.490: See RCW 43.63A.490.

43.63A.550 Growth management—Inventorying and collecting data. (1) The department shall assist in the process of inventorying and collecting data on public and private land for the acquisition of data describing land uses, demographics, infrastructure, critical areas, transportation corridors physical features, housing, and other information useful in managing growth throughout the state. For this purpose the department may contract with the consolidated technol-

ogy services agency and shall form an advisory group consisting of representatives from state, local, and federal agencies, colleges and universities, and private firms with expertise in land planning, and geographic information systems.

(2) The department shall establish a sequence for acquiring data, giving priority to rapidly growing areas. The data shall be retained in a manner to facilitate its use in preparing maps, aggregating with data from multiple jurisdictions, and comparing changes over time. Data shall further be retained in a manner which permits its access via computer.

(3) The department shall work with other state agencies, local governments, and private organizations that are inventorying public and private lands to ensure close coordination and to ensure that duplication of efforts does not occur. [2011 1st sp.s. c 43 § 814; 1998 c 245 § 71; 1990 1st ex.s. c 17 § 21.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

Chapter 43.70 RCW

DEPARTMENT OF HEALTH

Sections

43.70.110	License fees—Costs—Other charges—Waiver.
43.70.533	Chronic conditions—Training and technical assistance for primary care providers.
43.70.555	Assessment standards.
43.70.670	Human immunodeficiency virus insurance program.

43.70.110 License fees—Costs—Other charges—Waiver. (1) The secretary shall charge fees to the licensee for obtaining a license. Physicians regulated pursuant to chapter 18.71 RCW who reside and practice in Washington and obtain or renew a retired active license are exempt from such fees. After June 30, 1995, municipal corporations providing emergency medical care and transportation services pursuant to chapter 18.73 RCW shall be exempt from such fees, provided that such other emergency services shall only be charged for their pro rata share of the cost of licensure and inspection, if appropriate. The secretary may waive the fees when, in the discretion of the secretary, the fees would not be in the best interest of public health and safety, or when the fees would be to the financial disadvantage of the state.

(2) Except as provided in subsection (3) of this section, fees charged shall be based on, but shall not exceed, the cost to the department for the licensure of the activity or class of activities and may include costs of necessary inspection.

(3) License fees shall include amounts in addition to the cost of licensure activities in the following circumstances:

(a) For registered nurses and licensed practical nurses licensed under chapter 18.79 RCW, support of a central nursing resource center as provided in RCW 18.79.202, until June 30, 2013;

(b) For all health care providers licensed under RCW 18.130.040, the cost of regulatory activities for retired volunteer medical worker licensees as provided in RCW 18.130.360; and

(c) For physicians licensed under chapter 18.71 RCW, physician assistants licensed under chapter 18.71A RCW, osteopathic physicians licensed under chapter 18.57 RCW,

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osteopathic physicians' assistants licensed under chapter 18.57A RCW, naturopaths licensed under chapter 18.36A RCW, podiatrists licensed under chapter 18.22 RCW, chiropractors licensed under chapter 18.25 RCW, psychologists licensed under chapter 18.83 RCW, registered nurses licensed under chapter 18.79 RCW, optometrists licensed under chapter 18.53 RCW, mental health counselors licensed under chapter 18.225 RCW, massage therapists licensed under chapter 18.108 RCW, clinical social workers licensed under chapter 18.225 RCW, midwives licensed under chapter 18.50 RCW; licensed marriage and family therapists under chapter 18.225 RCW; and East Asian medicine practitioners licensed under chapter 18.06 RCW, the license fees shall include up to an additional twenty-five dollars to be transferred by the department to the University of Washington for the purposes of RCW 43.70.112.

(4) Department of health advisory committees may review fees established by the secretary for licenses and comment upon the appropriateness of the level of such fees. [2011 c 35 § 1; 2010 c 286 § 15; 2009 c 403 § 5; 2007 c 259 § 11; 2006 c 72 § 3; 2005 c 268 § 2; 1993 sp.s. c 24 § 918; 1989 1st ex.s. c 9 § 263.]

Intent—2010 c 286: See RCW 18.06.005.

Finding—Intent—2009 c 403: See note following RCW 18.71.080.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Finding—2005 c 268: See note following RCW 18.79.202.

Additional notes found at www.leg.wa.gov

43.70.533 Chronic conditions—Training and technical assistance for primary care providers. (1) The department shall conduct a program of training and technical assistance regarding care of people with chronic conditions for providers of primary care. The program shall emphasize evidence-based high quality preventive and chronic disease care and shall collaborate with the health care authority to promote the adoption of primary care health homes established under chapter 316, Laws of 2011. The department may designate one or more chronic conditions to be the subject of the program.

(2) The training and technical assistance program shall include the following elements:

(a) Clinical information systems and sharing and organization of patient data;

(b) Decision support to promote evidence-based care;

(c) Clinical delivery system design;

(d) Support for patients managing their own conditions; and

(e) Identification and use of community resources that are available in the community for patients and their families.

(3) In selecting primary care providers to participate in the program, the department shall consider the number and type of patients with chronic conditions the provider serves, and the provider's participation in the medicaid program, the basic health plan, and health plans offered through the public employees' benefits board.

(4) For the purposes of this section, "health home" and "primary care provider" have the same meaning as in RCW 74.09.010. [2011 c 316 § 3; 2007 c 259 § 5.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

43.70.555 Assessment standards. The department shall establish, by rule, standards for local health departments and networks to use in assessment, performance measurement, policy development, and assurance regarding social development to prevent health problems caused by risk factors empirically linked to: Violent criminal acts by juveniles, teen substance abuse, teen pregnancy and male parentage, teen suicide attempts, dropping out of school, child abuse or neglect, and domestic violence. The standards shall be based on the standards set forth in the public health services improvement plan as required by RCW 43.70.550. [2011 1st sp.s. c 32 § 8; 1998 c 245 § 77; 1994 sp.s. c 7 § 204.]

Transition plan—Report to the legislature—2011 1st sp.s. c 32: See note following RCW 70.305.005.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

43.70.670 Human immunodeficiency virus insurance program. (1) "Human immunodeficiency virus insurance program," as used in this section, means a program that provides health insurance coverage for individuals with human immunodeficiency virus, as defined in RCW 70.24.017(7), who are not eligible for medical assistance programs from the health care authority as defined in *RCW 74.09.010(10) and meet eligibility requirements established by the department of health.

(2) The department of health may pay for health insurance coverage on behalf of persons with human immunodeficiency virus, who meet department eligibility requirements, and who are eligible for "continuation coverage" as provided by the federal consolidated omnibus budget reconciliation act of 1985, group health insurance policies, or individual policies. [2011 1st sp.s. c 15 § 72; 2007 c 259 § 38; 2003 c 274 § 2.]

***Reviser's note:** RCW 74.09.010 was amended by 2011 c 316 § 2, changing subsection (10) to subsection (11).

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Rules—2003 c 274: "The department of health shall adopt rules to implement this act." [2003 c 274 § 3.]

Effective date—2003 c 274: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 274 § 4.]

Chapter 43.71 RCW

WASHINGTON HEALTH BENEFIT EXCHANGE

Sections

43.71.005	Finding—Intent.
43.71.010	Definitions.
43.71.020	Washington health benefit exchange.
43.71.030	Exchange—Powers and duties.
43.71.040	Authority, joint select committee on health reform, and board—Collaboration—Report—Responsibilities and duties.
43.71.050	Authority—Powers and duties.
43.71.060	Health benefit exchange account.
43.71.900	Conflict with federal requirements—2011 c 317.

43.71.005 Finding—Intent. (1) The legislature finds that the affordable care act requires the establishment of health benefit exchanges. The legislature intends to establish an exchange, including a governance structure. There are many policy decisions associated with establishing an exchange that need to be made that will take a great deal of effort and expertise. It is therefore the intent of the legislature to establish a process through which these policy decisions can be made by the legislature and the governor by the deadline established in the affordable care act.

(2) The exchange is intended to:

(a) Increase access to quality affordable health care coverage, reduce the number of uninsured persons in Washington state, and increase the availability of health care coverage through the private health insurance market to qualified individuals and small employers;

(b) Provide consumer choice and portability of health insurance, regardless of employment status;

(c) Create an organized, transparent, and accountable health insurance marketplace for Washingtonians to purchase affordable, quality health care coverage, to claim available federal refundable premium tax credits and cost-sharing subsidies, and to meet the personal responsibility requirements for minimum essential coverage as provided under the federal affordable care act;

(d) Promote consumer literacy and empower consumers to compare plans and make informed decisions about their health care and coverage;

(e) Effectively and efficiently administer health care subsidies and determination of eligibility for participation in publicly subsidized health care programs, including the exchange;

(f) Create a health insurance market that competes on the basis of price, quality, service, and other innovative efforts;

(g) Operate in a manner compatible with efforts to improve quality, contain costs, and promote innovation;

(h) Recognize the need for a private health insurance market to exist outside of the exchange; and

(i) Recognize that the regulation of the health insurance market, both inside and outside the exchange, should continue to be performed by the insurance commissioner. [2011 c 317 § 1.]

43.71.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. Terms and phrases used in this chapter that are not defined in this section must be defined as consistent with implementation of a state health benefit exchange pursuant to the affordable care act.

(1) "Affordable care act" means the federal patient protection and affordable care act, P.L. 111-148, as amended by the federal health care and education reconciliation act of 2010, P.L. 111-152, or federal regulations or guidance issued under the affordable care act.

(2) "Authority" means the Washington state health care authority, established under chapter 41.05 RCW.

(3) "Board" means the governing board established in RCW 43.71.020.

(4) "Commissioner" means the insurance commissioner, established in Title 48 RCW.

(5) "Exchange" means the Washington health benefit exchange established in RCW 43.71.020. [2011 c 317 § 2.]

43.71.020 Washington health benefit exchange. (1) The Washington health benefit exchange is established and constitutes a public-private partnership separate and distinct from the state, exercising functions delineated in chapter 317, Laws of 2011. By January 1, 2014, the exchange shall operate consistent with the affordable care act subject to statutory authorization. The exchange shall have a governing board consisting of persons with expertise in the Washington health care system and private and public health care coverage. The initial membership of the board shall be appointed as follows:

(a) By October 1, 2011, each of the two largest caucuses in both the house of representatives and the senate shall submit to the governor a list of five nominees who are not legislators or employees of the state or its political subdivisions, with no caucus submitting the same nominee.

(i) The nominations from the largest caucus in the house of representatives must include at least one employee benefit specialist;

(ii) The nominations from the second largest caucus in the house of representatives must include at least one health economist or actuary;

(iii) The nominations from the largest caucus in the senate must include at least one representative of health consumer advocates;

(iv) The nominations from the second largest caucus in the senate must include at least one representative of small business;

(v) The remaining nominees must have demonstrated and acknowledged expertise in at least one of the following areas: Individual health care coverage, small employer health care coverage, health benefits plan administration, health care finance and economics, actuarial science, or administering a public or private health care delivery system.

(b) By December 15, 2011, the governor shall appoint two members from each list submitted by the caucuses under (a) of this subsection. The appointments made under this subsection (1)(b) must include at least one employee benefits specialist, one health economist or actuary, one representative of small business, and one representative of health consumer advocates. The remaining four members must have a demonstrated and acknowledged expertise in at least one of the following areas: Individual health care coverage, small employer health care coverage, health benefits plan administration, health care finance and economics, actuarial science, or administering a public or private health care delivery system.

(c) By December 15, 2011, the governor shall appoint a ninth member to serve as chair. The chair may not be an employee of the state or its political subdivisions. The chair shall serve as a nonvoting member except in the case of a tie.

(d) The following members shall serve as nonvoting, ex officio members of the board:

(i) The insurance commissioner or his or her designee; and

(ii) The administrator of the health care authority, or his or her designee.

(2) Initial members of the board shall serve staggered terms not to exceed four years. Members appointed thereafter shall serve two-year terms.

(3) A member of the board whose term has expired or who otherwise leaves the board shall be replaced by gubernatorial appointment. When the person leaving was nominated by one of the caucuses of the house of representatives or the senate, his or her replacement shall be appointed from a list of five nominees submitted by that caucus within thirty days after the person leaves. If the member to be replaced is the chair, the governor shall appoint a new chair within thirty days after the vacancy occurs. A person appointed to replace a member who leaves the board prior to the expiration of his or her term shall serve only the duration of the unexpired term. Members of the board may be reappointed to multiple terms.

(4) No board member may be appointed if his or her participation in the decisions of the board could benefit his or her own financial interests or the financial interests of an entity he or she represents. A board member who develops such a conflict of interest shall resign or be removed from the board.

(5) Members of the board must be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060. The board shall prescribe rules for the conduct of its business. Meetings of the board are at the call of the chair.

(6) The exchange and the board are subject only to the provisions of chapter 42.30 RCW, the open public meetings act, and chapter 42.56 RCW, the public records act, and not to any other law or regulation generally applicable to state agencies. Consistent with the open public meetings act, the board may hold executive sessions to consider proprietary or confidential nonpublished information.

(7)(a) The board shall establish an advisory committee to allow for the views of the health care industry and other stakeholders to be heard in the operation of the health benefit exchange.

(b) The board may establish technical advisory committees or seek the advice of technical experts when necessary to execute the powers and duties included in chapter 317, Laws of 2011.

(8) Members of the board are not civilly or criminally liable and may not have any penalty or cause of action of any nature arise against them for any action taken or not taken, including any discretionary decision or failure to make a discretionary decision, when the action or inaction is done in good faith and in the performance of the powers and duties under chapter 317, Laws of 2011. Nothing in this section prohibits legal actions against the board to enforce the board's statutory or contractual duties or obligations.

(9) In recognition of the government-to-government relationship between the state of Washington and the federally recognized tribes in the state of Washington, the board shall consult with the American Indian health commission. [2011 c 317 § 3.]

43.71.030 Exchange—Powers and duties. (1) The exchange may, consistent with the purposes of this chapter: (a) Sue and be sued in its own name; (b) make and execute agreements, contracts, and other instruments, with any public or private person or entity; (c) employ, contract with, or

engage personnel; (d) pay administrative costs; and (e) accept grants, donations, loans of funds, and contributions in money, services, materials or otherwise, from the United States or any of its agencies, from the state of Washington and its agencies or from any other source, and use or expend those moneys, services, materials, or other contributions.

(2) The powers and duties of the exchange and the board are limited to those necessary to apply for and administer grants, establish information technology infrastructure, and undertake additional administrative functions necessary to begin operation of the exchange by January 1, 2014. Any actions relating to substantive issues included in RCW 43.71.040 must be consistent with statutory direction on those issues. [2011 c 317 § 4.]

43.71.040 Authority, joint select committee on health reform, and board—Collaboration—Report—Responsibilities and duties. (1) In collaboration with the joint select committee on health reform implementation, the authority shall:

(a) Apply for and implement grants under the affordable care act. Whenever possible, grant applications shall allow for the possibility of partially funding the activities of the joint select committee on health reform implementation;

(b) Develop and submit to the federal department of health and human services:

(i) A complete budget for the development and operation of an exchange through 2014;

(ii) An initial plan discussing the means to achieve financial sustainability of the exchange by 2015;

(iii) A plan outlining steps to prevent fraud, waste, and abuse; and

(iv) A plan describing how capacity for providing assistance to individuals and small businesses in the state will be created, continued, or expanded, including provision for a call center.

(2) Consistent with the work plan developed in subsection (3) of this section, but in no case later than January 1, 2012, the authority, in collaboration with the joint select committee on health reform implementation and the board, shall develop a broad range of options for operating the exchange and report the options to the governor and the legislature on an ongoing basis. The report must include analysis and recommendations on the following:

(a) The operations and administration of the exchange, including:

(i) The goals and principles of the exchange;

(ii) The creation and implementation of a single state-administered exchange for all geographic areas in the state that operates as the exchange for both the individual and small employer markets by January 1, 2014;

(iii) Whether and under what circumstances the state should consider establishment of, or participation in, a regionally administered multistate exchange;

(iv) Whether the role of an exchange includes serving as an aggregator of funds that comprise the premium for a health plan offered through the exchange;

(v) The administrative, fiduciary, accounting, contracting, and other services to be provided by the exchange;

(vi) Coordination of the exchange with other state programs;

(vii) Development of sustainable funding for administration of the exchange as of January 1, 2015; and

(viii) Recognizing the need for expedience in determining the structure of needed information technology, the necessary information technology to support implementation of exchange activities;

(b) Whether to adopt and implement a federal basic health plan option as authorized in the affordable care act, whether the federal basic health plan option should be administered by the entity that administers the exchange or by a state agency, and whether the federal basic health plan option should merge risk pools for rating with any portion of the state's medicaid program;

(c) Individual and small group market impacts, including whether to:

(i) Merge the risk pools for rating the individual and small group markets in the exchange and the private health insurance markets; and

(ii) Increase the small group market to firms with up to one hundred employees;

(d) Creation of uniform requirements, standards, and criteria for the creation of qualified health plans offered through the exchange, including promoting participation by carriers and enrollees in the exchange to a level sufficient to provide sustainable funding for the exchange;

(e) Certifying, selecting, and facilitating the offer of individual and small group plans through an exchange, to include designation of qualified health plans and the levels of coverage for the plans;

(f) The role and services provided by producers and navigators, including the option to use private insurance market brokers as navigators;

(g) Effective implementation of risk management methods, including: Reinsurance, risk corridors, risk adjustment, to include the entity designated to operate reinsurance and risk adjustment, and the continuing role of the Washington state health insurance pool;

(h) Participation in innovative efforts to contain costs in Washington's markets for public and private health care coverage;

(i) Providing federal refundable premium tax credits and reduced cost-sharing subsidies through the exchange, including the processes and entity responsible for determining eligibility to participate in the exchange and the cost-sharing subsidies provided through the exchange;

(j) The staff, resources, and revenues necessary to operate and administer an exchange for the first two years of operation;

(k) The extent and circumstances under which benefits for spiritual care services that are deductible under section 213(d) of the internal revenue code as of January 1, 2010, will be made available under the exchange; and

(l) Any other areas identified by the joint select committee on health reform implementation.

(3) In collaboration with the joint select committee on health reform implementation, the authority shall develop a work plan for the development of options under subsection (2) of this section in discrete, prioritized stages.

(4) The authority and the board shall consult with the commissioner, the joint select committee on health reform implementation, and stakeholders relevant to carrying out the

activities required under this section, including: (a) Educated health care consumers who are enrolled in commercial health insurance coverage and publicly subsidized health care programs; (b) individuals and entities with experience in facilitating enrollment in health insurance coverage, including health carriers, producers, and navigators; (c) representatives of small businesses, employees of small businesses, and self-employed individuals; (d) advocates for enrolling hard to reach populations and populations enrolled in publicly subsidized health care programs; (e) facilities and providers of health care; (f) representatives of publicly subsidized health care programs; and (g) members in good standing of the American academy of actuaries.

(5) Beginning March 15, 2012, the exchange shall be responsible for the duties of the authority under this section. Prior to March 15, 2012, the board may make independent recommendations regarding the options developed under subsection (2) of this section to the governor and the legislature. [2011 c 317 § 5.]

43.71.050 Authority—Powers and duties. (1) The authority may enter into:

(a) Information sharing agreements with federal and state agencies and other state exchanges to carry out the provisions of chapter 317, Laws of 2011: PROVIDED, That such agreements include adequate protections with respect to the confidentiality of the information to be shared and comply with all state and federal laws and regulations; and

(b) Interdepartmental agreements with the office of the insurance commissioner, the department of social and health services, the department of health, and any other state agencies necessary to implement chapter 317, Laws of 2011.

(2) To the extent funding is available, the authority shall:

(a) Provide staff and resources to implement chapter 317, Laws of 2011;

(b) Manage and administer the grant and other funds; and

(c) Expend funds specifically appropriated by the legislature to implement the provisions of chapter 317, Laws of 2011.

(3) Beginning March 15, 2012, the board shall:

(a) Be responsible for the duties imposed on the authority under this section; and

(b) Have the powers granted to the authority under this section. [2011 c 317 § 6.]

43.71.060 Health benefit exchange account. The health benefit exchange account is created in the custody of the state treasurer. All receipts from federal grants received under the affordable care act shall be deposited into the account. Expenditures from the account may be used only for purposes consistent with the grants. Until March 15, 2012, only the administrator of the health care authority, or his or her designee, may authorize expenditures from the account. Beginning March 15, 2012, only the board of the Washington health benefit exchange may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2011 c 317 § 7.]

[2011 RCW Supp—page 916]

43.71.900 Conflict with federal requirements—2011 c 317. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [2011 c 317 § 9.]

Chapter 43.78 RCW

PUBLIC PRINTER—PUBLIC PRINTING

Sections

43.78.010	through 43.78.110 Repealed.
43.78.130	Recodified as RCW 43.19.748.
43.78.140	Recodified as RCW 43.19.751.
43.78.150	Recodified as RCW 43.19.754.
43.78.160	Recodified as RCW 43.19.757.
43.78.170	Repealed.

43.78.010 through 43.78.110 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.78.130 Recodified as RCW 43.19.748. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.78.140 Recodified as RCW 43.19.751. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.78.150 Recodified as RCW 43.19.754. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.78.160 Recodified as RCW 43.19.757. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.78.170 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.79 RCW

STATE FUNDS

Sections

43.79.201	C.E.P. & R.I. account—Moneys transferred to charitable, educational, penal and reformatory institutions account—Exception.
43.79.460	Savings incentive account—Report.
43.79.465	Education savings account.
43.79.480	Tobacco settlement account—Transfers to life sciences discovery fund—Tobacco prevention and control account.
43.79.487	Basic health plan stabilization account.
43.79.505	Judicial stabilization trust account.

43.79.201 C.E.P. & R.I. account—Moneys transferred to charitable, educational, penal and reformatory institutions account—Exception. (1) The charitable, edu-

cational, penal and reformatory institutions account is hereby created, in the state treasury, into which account there shall be deposited all moneys arising from the sale, lease or transfer of the land granted by the United States government to the state for charitable, educational, penal and reformatory institutions by section 17 of the enabling act, or otherwise set apart for such institutions, except all moneys arising from the sale, lease, or transfer of that certain one hundred thousand acres of such land assigned for the support of the University of Washington by chapter 91, Laws of 1903 and section 9, chapter 122, Laws of 1893.

(2) If feasible, not less than one-half of all income to the charitable, educational, penal, and reformatory institutions account shall be appropriated for the purpose of providing housing, including repair and renovation of state institutions, for persons with mental illness or developmental disabilities, or youth who are blind, deaf, or otherwise disabled. If moneys are appropriated for community-based housing, the moneys shall be appropriated to the department of commerce for the housing assistance program under chapter 43.185 RCW. During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may transfer from the charitable, educational, penal and reformatory institutions account to the state general fund such amounts as reflect excess fund balance of the account. [2011 1st sp.s. c 50 § 945; 2009 c 564 § 935; 1995 c 399 § 77; 1991 sp.s. c 13 § 39; 1991 c 204 § 3; 1985 c 57 § 37; 1965 ex.s. c 135 § 2; 1965 c 8 § 43.79.201. Prior: 1961 c 170 § 1.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

Income potential: RCW 79.02.410.

Inventory of land: RCW 79.02.400.

Additional notes found at www.leg.wa.gov

43.79.460 Savings incentive account—Report. (1)

The savings incentive account is created in the custody of the state treasurer. The account shall consist of all moneys appropriated to the account by the legislature. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures from the account.

(2) Within the savings incentive account, the state treasurer may create subaccounts to be credited with incentive savings attributable to individual state agencies, as determined by the office of financial management in consultation with the legislative fiscal committees. Moneys deposited in the subaccounts may be expended only on the authorization of the agency's executive head or designee and only for the purpose of one-time expenditures to improve the quality, efficiency, and effectiveness of services to customers of the state, such as one-time expenditures for employee training, employee incentives, technology improvements, new work processes, or performance measurement. Funds may not be expended from the account to establish new programs or services, expand existing programs or services, or incur ongoing costs that would require future expenditures.

(3) For purposes of this section, "incentive savings" means state general fund appropriations that are unspent as of June 30th of a fiscal year, excluding any amounts included in

across-the-board reductions under RCW 43.88.110 and excluding unspent appropriations for:

(a) Caseload and enrollment in entitlement programs, except to the extent that an agency has clearly demonstrated that efficiencies have been achieved in the administration of the entitlement program. "Entitlement program," as used in this section, includes programs for which specific sums of money are appropriated for pass-through to third parties or other entities;

(b) Enrollments in state institutions of higher education;

(c) A specific amount contained in a condition or limitation to an appropriation in the biennial appropriations act, if the agency did not achieve the specific purpose or objective of the condition or limitation;

(d) Debt service on state obligations; and

(e) State retirement system obligations.

(4) The office of financial management, after consulting with the legislative fiscal committees, shall report the amount of savings incentives achieved.

(5) For fiscal year 2010, the legislature may transfer from the savings incentive account to the state general fund such amounts as reflect the fund balance of the account attributable to unspent state general fund appropriations for fiscal year 2009. For fiscal year 2011, the legislature may transfer from the savings incentive account to the state general fund such amounts as reflect the fund balance of the account attributable to unspent state general fund appropriations for fiscal year 2010. For fiscal year 2011, the legislature may transfer from the savings incentive account to the state general fund eight million dollars or as much as reflects the fund balance of the account attributable to unspent agency credits prior to fiscal year 2009. Credits for legislative and judicial agencies are not included in this action, with the exception and upon consent of the supreme court, court of appeals, office of public defense, and office of civil legal aid. [2011 c 5 § 909; 2010 1st sp.s. c 37 § 928; 2009 c 518 § 21; 2009 c 4 § 902; 1998 c 302 § 1; 1997 c 261 § 1.]

Effective date—2011 c 5: See note following RCW 43.79.487.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 4: See note following RCW 28A.505.220.

Additional notes found at www.leg.wa.gov

43.79.465 Education savings account. The education savings account is created in the state treasury. The account shall consist of all moneys appropriated to the account by the legislature.

(1) Ten percent of legislative appropriations to the education savings account shall be distributed as follows: (a) Fifty percent to the distinguished professorship trust fund under RCW 28B.76.565; (b) seventeen percent to the graduate fellowship trust fund under RCW 28B.76.610; and (c) thirty-three percent to the college faculty awards trust fund under RCW 28B.50.837.

(2) The remaining moneys in the education savings account may be appropriated solely for (a) common school construction projects that are eligible for funding from the common school construction account, (b) technology improvements in the common schools, (c) during the 2001-03 fiscal biennium, technology improvements in public higher

education institutions, (d) during the 2007-2009 fiscal biennium, the legislature may transfer from the education savings account to the state general fund such amounts as reflect the excess fund balance of the account attributable to unspent state general fund appropriations for fiscal year 2008, (e) for fiscal year 2011, the legislature may transfer from the education savings account to the state general fund such amounts as reflect the fund balance of the account attributable to unspent general fund appropriations for fiscal year 2010, and (f) for fiscal years 2012 and 2013, the legislature may transfer from the education savings account to the state general fund such amounts as reflect the fund balance of the account attributable to unspent general fund appropriations for fiscal years 2011 and 2012. [2011 1st sp.s. c 50 § 946; 2011 c 5 § 910; 2010 1st sp.s. c 37 § 929; 2009 c 4 § 903; 2004 c 275 § 64; 2001 2nd sp.s. c 7 § 917; 1998 c 302 § 2; 1997 c 261 § 2. Formerly RCW 28A.305.235.]

Reviser's note: This section was amended by 2011 c 5 § 910 and by 2011 1st sp.s. c 50 § 946, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2011 c 5: See note following RCW 43.79.487.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 4: See note following RCW 28A.505.220.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Additional notes found at www.leg.wa.gov

43.79.480 Tobacco settlement account—Transfers to life sciences discovery fund—Tobacco prevention and control account. (1) Moneys received by the state of Washington in accordance with the settlement of the state's legal action against tobacco product manufacturers, exclusive of costs and attorneys' fees, shall be deposited in the tobacco settlement account created in this section except as these moneys are sold or assigned under chapter 43.340 RCW.

(2) The tobacco settlement account is created in the state treasury. Moneys in the tobacco settlement account may only be transferred to the state general fund, and to the tobacco prevention and control account for purposes set forth in this section. The legislature shall transfer amounts received as strategic contribution payments as defined in RCW 43.350.010 to the life sciences discovery fund created in RCW 43.350.070. During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may transfer less than the entire strategic contribution payments, and may transfer amounts attributable to strategic contribution payments into the basic health plan stabilization account.

(3) The tobacco prevention and control account is created in the state treasury. The source of revenue for this account is moneys transferred to the account from the tobacco settlement account, investment earnings, donations to the account, and other revenues as directed by law. Expenditures from the account are subject to appropriation. During the 2009-2011 fiscal biennium, the legislature may transfer from the tobacco prevention and control account to the state

general fund such amounts as represent the excess fund balance of the account. [2011 1st sp.s. c 50 § 947. Prior: 2009 c 564 § 937; 2009 c 479 § 30; 2005 c 424 § 12; 2002 c 365 § 15; 1999 c 309 § 927.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

Effective date—2009 c 479: See note following RCW 2.56.030.

Captions not law—Liberal construction—Severability—Effective dates—2005 c 424: See RCW 43.350.900 through 43.350.903.

Captions not law—Severability—Effective date—2002 c 365: See RCW 43.340.900 through 43.340.902.

Additional notes found at www.leg.wa.gov

43.79.487 Basic health plan stabilization account.

The basic health plan stabilization account is created in the state treasury, to consist of such revenues, appropriations, and transfers as may be directed by law. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used solely for the support of the basic health plan under chapter 70.47 RCW. [2011 c 5 § 711.]

Effective date—2011 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 18, 2011]." [2011 c 5 § 922.]

43.79.505 Judicial stabilization trust account. The judicial stabilization trust account is created within the state treasury, subject to appropriation. All receipts from the surcharges authorized by RCW 3.62.060(2), 12.40.020(2), 36.18.018(4), and 36.18.020(5) shall be deposited in this account. Moneys in the account may be spent only after appropriation.

Expenditures from the account may be used only for the support of judicial branch agencies. [2011 1st sp.s. c 44 § 6; 2009 c 572 § 5.]

Effective date—2011 1st sp.s. c 44: See note following RCW 3.62.020.

Effective date—2009 c 572: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 572 § 6.]

Chapter 43.79A RCW

TREASURER'S TRUST FUND

Sections

43.79A.040 Management—Income—Investment income account—Distribution.

43.79A.040 Management—Income—Investment income account—Distribution. (1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must be set aside in an account in the trea-

surety trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments must occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the accessible communities account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the students with dependents grant account, the basic health plan self-insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the Washington international exchange scholarship endowment fund, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family leave insurance account, the food animal veterinarian conditional scholarship account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the pilotage account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the sulfur dioxide abatement account, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account (earnings from the Washington horse racing commission operating account must be credited to the Washington horse racing commission class C purse fund account), the life sciences discovery fund, the Washington state heritage center account, the reduced cigarette ignition propensity account, and the reading achievement account.

(c) The following accounts and funds must receive eighty percent of their proportionate share of earnings based

upon each account's or fund's average daily balance for the period: The advanced right-of-way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2011 1st sp.s. c 37 § 603; 2011 c 274 § 4. Prior: 2010 1st sp.s. c 19 § 22; 2010 1st sp.s. c 13 § 4; 2010 1st sp.s. c 9 § 6; 2010 c 222 § 4; 2010 c 215 § 7; 2009 c 87 § 4; prior: 2008 c 239 § 9; 2008 c 208 § 9; 2008 c 128 § 20; 2008 c 122 § 24; prior: 2007 c 523 § 5; 2007 c 357 § 21; 2007 c 214 § 14; prior: 2006 c 311 § 21; 2006 c 120 § 2; prior: 2005 c 424 § 18; 2005 c 402 § 8; 2005 c 215 § 10; 2005 c 16 § 2; prior: 2004 c 246 § 8; 2004 c 58 § 10; prior: 2003 c 403 § 9; 2003 c 313 § 10; 2003 c 191 § 7; 2003 c 148 § 15; 2003 c 92 § 8; 2003 c 19 § 12; prior: 2002 c 322 § 5; 2002 c 204 § 7; 2002 c 61 § 6; prior: 2001 c 201 § 4; 2001 c 184 § 4; 2000 c 79 § 45; prior: 1999 c 384 § 8; 1999 c 182 § 2; 1998 c 268 § 1; prior: 1997 c 368 § 8; 1997 c 289 § 13; 1997 c 220 § 221 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 140 § 6; 1997 c 94 § 3; 1996 c 253 § 409; prior: 1995 c 394 § 2; 1995 c 365 § 1; prior: 1993 sp.s. c 8 § 2; 1993 c 500 § 5; 1991 sp.s. c 13 § 82; 1973 1st ex.s. c 15 § 4.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Finding—Intent—2011 c 274: See note following RCW 28B.50.515.

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Effective date—2010 1st sp.s. c 9: See note following RCW 43.105.805.

Intent—2010 c 222: See note following RCW 43.08.150.

Findings—2010 c 215: See note following RCW 50.40.071.

Effective date—2009 c 87 § 4: "Section 4 of this act takes effect August 1, 2009." [2009 c 87 § 5.]

Effective date—2008 c 239: See RCW 19.305.900.

Findings—Intent—2008 c 208: See RCW 28B.121.005.

Effective date—2008 c 128 §§ 17-20: See note following RCW 88.16.061.

Effective date—2008 c 122 §§ 23 and 24: See note following RCW 47.56.167.

Contingency—2007 c 523: See note following RCW 43.07.128.

Findings—2006 c 311: See note following RCW 36.120.020.

Captions not law—Liberal construction—Severability—Effective dates—2005 c 424: See RCW 43.350.900 through 43.350.903.

SEED act—Findings—Purpose—Short title—2005 c 402: See RCW 43.31.450 and 43.31.485.

Effective date—2004 c 246: See note following RCW 67.16.270.

Intent—2003 c 403: See RCW 70.210.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Severability—Effective date—2003 c 92: See RCW 41.26.905 and 41.26.906.

Finding—Intent—Short title—Captions not law—2003 c 19: See RCW 28B.133.005, 28B.133.900, and 28B.133.901.

Effective date—2002 c 322: See note following RCW 15.17.240.

Effective date—2002 c 204: See RCW 28B.119.900.

Intent—Captions not law—1999 c 384: See notes following RCW 43.70.731.

Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368: See notes following RCW 82.08.810.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Intent—1997 c 140: See note following RCW 47.12.330.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Additional notes found at www.leg.wa.gov

Chapter 43.82 RCW

STATE AGENCY HOUSING

Sections

- 43.82.120 Enterprise services account—Rental income.
43.82.125 Authorized uses for enterprise services account.

43.82.120 Enterprise services account—Rental income. All rental income collected by the department of enterprise services from rental of state buildings shall be deposited in the enterprise services account. [2011 1st sp.s. c 43 § 254; 1998 c 105 § 14; 1994 c 219 § 14; 1965 c 8 § 43.82.120. Prior: 1961 c 184 § 5; 1959 c 255 § 12.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Finding—1994 c 219: See note following RCW 43.88.030.

Additional notes found at www.leg.wa.gov

43.82.125 Authorized uses for enterprise services account. The enterprise services account shall be used to pay all costs incurred by the department in the operation of real estate managed under the terms of this chapter. Moneys received into the enterprise services account shall be used to pay rent to the owner of the space for occupancy of which the charges have been made and to pay utility and operational costs of the space utilized by the occupying agency: PROVIDED, That moneys received into the account for occupancy of space owned by the state where utilities and other operational costs are covered by appropriation to the department of enterprise services shall be immediately transmitted to the general fund. [2011 1st sp.s. c 43 § 255; 1998 c 105 § 15; 1965 c 8 § 43.82.125. Prior: 1961 c 184 § 6.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

[2011 RCW Supp—page 920]

Chapter 43.83B RCW WATER SUPPLY FACILITIES

Sections

- 43.83B.430 State drought preparedness account.

43.83B.430 State drought preparedness account. The state drought preparedness account is created in the state treasury. All receipts from appropriated funds designated for the account and funds transferred from the state emergency water projects revolving account must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for drought preparedness. During the 2009-2011 fiscal biennium, the legislature may transfer from the state drought preparedness account to the state general fund such amounts as reflect the excess fund balance of the account. [2011 c 5 § 911; 2002 c 371 § 910; 1999 c 379 § 921.]

Effective date—2011 c 5: See note following RCW 43.79.487.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Additional notes found at www.leg.wa.gov

Chapter 43.84 RCW

INVESTMENTS AND INTERFUND LOANS

Sections

- 43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited.

43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments

shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the county sales and use tax equalization account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the health system capacity account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety account, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multiagency permitting team account, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and

plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated

earnings without the specific affirmative directive of this section. [2011 1st sp.s. c 16 § 6; 2011 1st sp.s. c 7 § 22; 2011 c 369 § 6; 2011 c 339 § 1; 2011 c 311 § 9; 2011 c 272 § 3; 2011 c 120 § 3; 2011 c 83 § 7. Prior: 2010 1st sp.s. c 30 § 20; 2010 1st sp.s. c 9 § 7; 2010 c 248 § 6; 2010 c 222 § 5; 2010 c 162 § 6; 2010 c 145 § 11; prior: 2009 c 479 § 31; 2009 c 472 § 5; 2009 c 451 § 8; (2009 c 451 § 7 expired July 1, 2009); prior: 2008 c 128 § 19; 2008 c 106 § 4; (2008 c 106 § 3 expired July 1, 2009); (2008 c 106 § 2 expired July 1, 2008); prior: 2007 c 514 § 3; 2007 c 513 § 1; 2007 c 484 § 4; 2007 c 356 § 9; prior: 2006 c 337 § 11; (2006 c 337 § 10 expired July 1, 2006); 2006 c 311 § 23; (2006 c 311 § 22 expired July 1, 2006); 2006 c 171 § 10; (2006 c 171 § 9 expired July 1, 2006); 2006 c 56 § 10; (2006 c 56 § 9 expired July 1, 2006); 2006 c 6 § 8; prior: 2005 c 514 § 1106; 2005 c 353 § 4; 2005 c 339 § 23; 2005 c 314 § 110; 2005 c 312 § 8; 2005 c 94 § 2; 2005 c 83 § 5; prior: (2005 c 353 § 2 expired July 1, 2005); 2004 c 242 § 60; prior: 2003 c 361 § 602; 2003 c 324 § 1; 2003 c 150 § 2; 2003 c 48 § 2; prior: 2002 c 242 § 2; 2002 c 114 § 24; 2002 c 56 § 402; prior: 2001 2nd sp.s. c 14 § 608; (2001 2nd sp.s. c 14 § 607 expired March 1, 2002); 2001 c 273 § 6; (2001 c 273 § 5 expired March 1, 2002); 2001 c 141 § 3; (2001 c 141 § 2 expired March 1, 2002); 2001 c 80 § 5; (2001 c 80 § 4 expired March 1, 2002); 2000 2nd sp.s. c 4 § 6; prior: 2000 2nd sp.s. c 4 § 5; (2000 2nd sp.s. c 4 §§ 3, 4 expired September 1, 2000); 2000 c 247 § 702; 2000 c 79 § 39; (2000 c 79 §§ 37, 38 expired September 1, 2000); prior: 1999 c 380 § 9; 1999 c 380 § 8; 1999 c 309 § 929; (1999 c 309 § 928 expired September 1, 2000); 1999 c 268 § 5; (1999 c 268 § 4 expired September 1, 2000); 1999 c 94 § 4; (1999 c 94 §§ 2, 3 expired September 1, 2000); 1998 c 341 § 708; 1997 c 218 § 5; 1996 c 262 § 4; prior: 1995 c 394 § 1; 1995 c 122 § 12; prior: 1994 c 2 § 6 (Initiative Measure No. 601, approved November 2, 1993); 1993 sp.s. c 25 § 511; 1993 sp.s. c 8 § 1; 1993 c 500 § 6; 1993 c 492 § 473; 1993 c 445 § 4; 1993 c 329 § 2; 1993 c 4 § 9; 1992 c 235 § 4; 1991 sp.s. c 13 § 57; 1990 2nd ex.s. c 1 § 204; 1989 c 419 § 12; 1985 c 57 § 51.]

Reviser's note: This section was amended by 2011 1st sp.s. c 16 § 6, 2011 1st sp.s. c 7 § 22, 2011 c 369 § 6, 2011 c 339 § 1, 2011 c 311 § 9, 2011 c 272 § 3, 2011 c 120 § 3, and by 2011 c 83 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Intent—2011 c 369: See note following RCW 47.56.880.

Effective date—2011 c 339: "Sections 1 through 4 and 6 through 38 of this act take effect September 1, 2011." [2011 c 339 § 39.]

Effective date—2010 1st sp.s. c 30: See RCW 74.60.903.

Effective date—2010 1st sp.s. c 9: See note following RCW 43.105.805.

Intent—2010 c 222: See note following RCW 43.08.150.

Effective date—2010 c 162: See note following RCW 43.42.090.

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—Effective date—2009 c 472: See notes following RCW 47.56.870.

Effective date—2009 c 451 § 8: "Section 8 of this act takes effect July 1, 2009." [2009 c 451 § 9.]

Expiration dates—2009 c 451 §§ 2, 3, 5, 6, and 7: See note following RCW 43.325.010.

Effective date—Intent—2009 c 451: See notes following RCW 43.325.010.

Effective date—2008 c 128 §§ 17-20: See note following RCW 88.16.061.

Expiration dates—2008 c 106 §§ 2 and 3: "(1) Section 2 of this act expires July 1, 2008.

(2) Section 3 of this act expires July 1, 2009." [2008 c 106 § 5.]

Effective dates—2008 c 106 §§ 3 and 4: "(1) Section 3 of this act takes effect July 1, 2008.

(2) Section 4 of this act takes effect July 1, 2009." [2008 c 106 § 6.]

Effective date—2007 c 513: "This act takes effect July 1, 2009." [2007 c 513 § 2.]

Contingent effective date—2007 c 484 §§ 2-8: See note following RCW 43.79.495.

Short title—2007 c 356: See note following RCW 74.31.005.

Effective date—2006 c 337 § 11: "Section 11 of this act takes effect July 1, 2006." [2006 c 337 § 14.]

Expiration date—2006 c 337 § 10: "Section 10 of this act expires July 1, 2006." [2006 c 337 § 13.]

Effective date—2006 c 311 § 23: "Section 23 of this act takes effect July 1, 2006." [2006 c 311 § 31.]

Expiration date—2006 c 311 § 22: "Section 22 of this act expires July 1, 2006." [2006 c 311 § 30.]

Findings—2006 c 311: See note following RCW 36.120.020.

Expiration date—2006 c 171 § 9: "Section 9 of this act expires July 1, 2006." [2006 c 171 § 14.]

Effective date—2006 c 171 §§ 8 and 10: See note following RCW 42.56.270.

Findings—Severability—2006 c 171: See RCW 43.325.001 and 43.325.901.

Expiration date—2006 c 56 § 9: "Section 9 of this act expires July 1, 2006." [2006 c 56 § 11.]

Effective dates—2006 c 56: See note following RCW 41.45.230.

Effective date—2006 c 6: See RCW 90.90.900.

Effective date—2005 c 514 § 1106: "Section 1106 of this act takes effect July 1, 2006." [2005 c 514 § 1313.]

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective dates—2005 c 353: See note following RCW 71A.20.170.

Effective date—2005 c 339 § 23: "Section 23 of this act takes effect July 1, 2006." [2005 c 339 § 25.]

Effective dates—2005 c 314 §§ 110 and 201-206: See note following RCW 46.68.035.

Part headings not law—2005 c 314: See note following RCW 46.68.035.

Effective dates—2005 c 312 §§ 6 and 8: See note following RCW 42.17.310.

Intent—Captions—2005 c 312: See notes following RCW 47.56.401.

Effective dates—2005 c 94: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

(2) Section 2 of this act takes effect July 1, 2006." [2005 c 94 § 3.]

Findings—Effective dates—2005 c 83: See notes following RCW 47.26.340.

Effective date—2004 c 242: See RCW 41.37.901.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—2003 c 150 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2005." [2003 c 150 § 4.]

Findings—Intent—2003 c 150; 2002 c 242: "The legislature finds that the community economic revitalization board plays a valuable and unique role in stimulating and diversifying local economies, attracting private investment, creating new jobs, and generating additional state and local tax

revenues by investing in public facilities projects that result in new or expanded economic development. The legislature also finds that it is in the best interest of the state and local communities to secure a stable and dedicated source of funds for the community economic revitalization board. It is the intent of the legislature to establish an ongoing funding source for the community economic revitalization board that will be used exclusively to advance economic development infrastructure. This act provides a partial funding solution by directing that beginning July 1, 2005, the interest earnings generated by the public works assistance account shall be used to fund the community economic revitalization board's financial assistance programs. These funds are not for use other than for the stated purpose and goals of the community economic revitalization board." [2003 c 150 § 1; 2002 c 242 § 1.]

Effective date—2003 c 48: See note following RCW 29A.04.440.

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

Effective date—2001 2nd sp.s. c 14 § 608: "Section 608 of this act takes effect March 1, 2002." [2001 2nd sp.s. c 14 § 611.]

Expiration date—2001 2nd sp.s. c 14 § 607: "Section 607 of this act expires March 1, 2002." [2001 2nd sp.s. c 14 § 610.]

Severability—Effective date—2001 2nd sp.s. c 14: See notes following RCW 47.04.210.

Effective date—2001 c 273 § 6: "Section 6 of this act takes effect March 1, 2002." [2001 c 273 § 8.]

Expiration date—2001 c 273 § 5: "Section 5 of this act expires March 1, 2002." [2001 c 273 § 7.]

Effective date—2001 c 141 § 3: "Section 3 of this act takes effect March 1, 2002." [2001 c 141 § 6.]

Expiration date—2001 c 141 § 2: "Section 2 of this act expires March 1, 2002." [2001 c 141 § 5.]

Purpose—2001 c 141: "This act is needed to comply with federal law, which is the source of funds in the drinking water assistance account, used to fund the Washington state drinking water loan program as part of the federal safe drinking water act." [2001 c 141 § 1.]

Effective date—2001 c 80 § 5: "Section 5 of this act takes effect March 1, 2002." [2001 c 80 § 7.]

Expiration date—2001 c 80 § 4: "Section 4 of this act expires March 1, 2002." [2001 c 80 § 6.]

Findings—Intent—2001 c 80: See note following RCW 43.70.040.

Legislative finding—1999 c 94: "The legislature finds that a periodic review of the accounts and their uses is necessary. While creating new accounts may facilitate the implementation of legislative intent, the creation of too many accounts limits the effectiveness of performance-based budgeting. Too many accounts also limit the flexibility of the legislature to address emerging and changing issues in addition to creating administrative burdens for the responsible agencies. Accounts created for specific purposes may no longer be valid or needed. Accordingly, this act eliminates accounts that are not in use or are unneeded and consolidates accounts that are similar in nature." [1999 c 94 § 1.]

Findings—Effective date—1997 c 218: See notes following RCW 70.119.030.

Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262: See RCW 82.44.195.

Declaration—Intent—Purpose—1995 c 122: See RCW 59.21.006.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

Additional notes found at www.leg.wa.gov

Chapter 43.88 RCW

STATE BUDGETING, ACCOUNTING, AND REPORTING SYSTEM

Sections

- 43.88.092 Information technology budget detail—Information technology plan—Accounting method for information technology.
- 43.88.150 Priority of expenditures—Appropriated and nonappropriated funds—Matching funds, disburse state moneys proportionally.
- 43.88.580 Database of state agency contracts for personal services—State expenditure information web site.

43.88.092 Information technology budget detail—Information technology plan—Accounting method for information technology. (1) As part of the biennial budget process, the office of financial management shall collect from agencies, and agencies shall provide, information to produce reports, summaries, and budget detail sufficient to allow review, analysis, and documentation of all current and proposed expenditures for information technology by state agencies. Information technology budget detail must be included as part of the budget submittal documentation required pursuant to RCW 43.88.030.

(2) The office of financial management must collect, and present as part of the biennial budget documentation, information for all existing information technology projects as defined by information services board policy. The office of financial management must work with the office of the chief information officer to maximize the ability to draw this information from the information technology portfolio management data collected by the department of information services pursuant to *RCW 43.105.170. Connecting project information collected through the portfolio management process with financial data developed under subsection (1) of this section provides transparency regarding expenditure data for existing technology projects.

(3) The biennial budget documentation submitted by the office of financial management pursuant to RCW 43.88.030 must include an information technology plan and a technology budget for the state identifying current baseline funding for information technology, proposed and ongoing major information technology projects, and their associated costs. This plan and technology budget must be presented using a method similar to the capital budget, identifying project costs through stages of the project and across fiscal periods and biennia from project initiation to implementation. This information must be submitted electronically, in a format to be determined by the office of financial management and the legislative evaluation and accountability program committee.

(4) The office of financial management shall also institute a method of accounting for information technology-related expenditures, including creating common definitions for what constitutes an information technology investment.

(5) For the purposes of this section, "major information technology projects" includes projects that have a significant anticipated cost, complexity, or are of statewide significance, such as enterprise-level solutions, enterprise resource planning, and shared services initiatives. [2011 1st sp.s. c 43 § 733; 2010 c 282 § 3.]

*Reviser's note: RCW 43.105.170 was repealed by 2011 1st sp.s. c 43 § 1013, effective October 1, 2011.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.88.150 Priority of expenditures—Appropriated and nonappropriated funds—Matching funds, disburse state moneys proportionally. (1) For those agencies that make expenditures from both appropriated and nonappropriated funds for the same purpose, the governor shall direct such agencies to charge their expenditures in such ratio, as between appropriated and nonappropriated funds, as will conserve appropriated funds. This subsection does not apply to institutions of higher education, as defined in RCW 28B.10.016, except during the 2011-2013 fiscal biennium.

(2) Unless otherwise provided by law, if state moneys are appropriated for a capital project and matching funds or other contributions are required as a condition of the receipt of the state moneys, the state moneys shall be disbursed in proportion to and only to the extent that the matching funds or other contributions have been received and are available for expenditure.

(3) The office of financial management shall adopt guidelines for the implementation of this section. The guidelines may account for federal matching requirements or other requirements to spend other moneys in a particular manner. [2011 1st sp.s. c 50 § 948; 1995 c 6 § 1; 1991 c 284 § 3; 1981 c 270 § 10; 1965 c 8 § 43.88.150. Prior: 1959 c 328 § 15.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Additional notes found at www.leg.wa.gov

43.88.580 Database of state agency contracts for personal services—State expenditure information web site.

(1) The department of enterprise services shall make electronically available to the public a database of state agency contracts for personal services required to be filed with the department of enterprise services under chapter 39.29 RCW.

(2) The state expenditure information web site described in RCW 44.48.150 shall include a link to the department of enterprise services database described in subsection (1) of this section. [2011 1st sp.s. c 43 § 534; 2008 c 326 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—2008 c 236: See note following RCW 44.48.150.

Chapter 43.88A RCW

LEGISLATIVE FISCAL NOTES

Sections

43.88A.020 Preparation—Ongoing cost projections—Duties of office of financial management—School district fiscal notes.

43.88A.020 Preparation—Ongoing cost projections—Duties of office of financial management—School district fiscal notes. The office of financial management shall, in cooperation with appropriate legislative committees and legislative staff, establish a procedure for the provision of fiscal notes on the expected impact of bills and resolutions which increase or decrease or tend to increase or decrease state government revenues or expenditures. Such fiscal notes shall indicate by fiscal year the impact for the remainder of the biennium in which the bill or resolution will first take

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effect as well as a cumulative forecast of the fiscal impact for the succeeding four fiscal years. Fiscal notes shall separately identify the fiscal impacts on the operating and capital budgets. Estimates of fiscal impacts shall be calculated using the procedures contained in the fiscal note instructions issued by the office of financial management.

In establishing the fiscal impact called for pursuant to this chapter, the office of financial management shall coordinate the development of fiscal notes with all state agencies affected.

The preparation and dissemination of the ongoing cost projections and other requirements of RCW 43.135.031 for bills increasing taxes or fees shall take precedence over fiscal notes.

For proposed legislation that uniquely affects school districts, in addition to any fiscal note prepared under this chapter, a school district fiscal note must be prepared under the process established in RCW 28A.300.0401. [2011 c 140 § 1; 2008 c 1 § 3 (Initiative Measure No. 960, approved November 6, 2007); 1994 c 219 § 3; 1979 c 151 § 146; 1977 ex.s. c 25 § 2.]

Findings—Intent—Construction—Severability—Subheadings and part headings not law—Short title—Effective date—2008 c 1 (Initiative Measure No. 960): See notes following RCW 43.135.031.

Finding—1994 c 219: See note following RCW 43.88.030.

Chapter 43.88C RCW

CASELOAD FORECAST COUNCIL

Sections

43.88C.010 Caseload forecast council—Caseload forecast supervisor—Oversight and approval of official caseload forecast—Alternative forecast—Travel reimbursement—Definitions.
43.88C.040 Sentencing information system—Sentencing manual.
43.88C.050 Research staff.

43.88C.010 Caseload forecast council—Caseload forecast supervisor—Oversight and approval of official caseload forecast—Alternative forecast—Travel reimbursement—Definitions. (1) The caseload forecast council is hereby created. The council shall consist of two individuals appointed by the governor and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the senate and house of representatives. The chair of the council shall be selected from among the four caucus appointees. The council may select such other officers as the members deem necessary.

(2) The council shall employ a caseload forecast supervisor to supervise the preparation of all caseload forecasts. As used in this chapter, "supervisor" means the caseload forecast supervisor.

(3) Approval by an affirmative vote of at least five members of the council is required for any decisions regarding employment of the supervisor. Employment of the supervisor shall terminate after each term of three years. At the end of the first year of each three-year term the council shall consider extension of the supervisor's term by one year. The council may fix the compensation of the supervisor. The supervisor shall employ staff sufficient to accomplish the purposes of this section.

(4) The caseload forecast council shall oversee the preparation of and approve, by an affirmative vote of at least four

members, the official state caseload forecasts prepared under RCW 43.88C.020. If the council is unable to approve a forecast before a date required in RCW 43.88C.020, the supervisor shall submit the forecast without approval and the forecast shall have the same effect as if approved by the council.

(5) A councilmember who does not cast an affirmative vote for approval of the official caseload forecast may request, and the supervisor shall provide, an alternative forecast based on assumptions specified by the member.

(6) Members of the caseload forecast council shall serve without additional compensation but shall be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7) "Caseload," as used in this chapter, means:

(a) The number of persons expected to meet entitlement requirements and require the services of public assistance programs, state correctional institutions, state correctional noninstitutional supervision, state institutions for juvenile offenders, the common school system, long-term care, medical assistance, foster care, and adoption support;

(b) The number of students who are eligible for the Washington college bound scholarship program and are expected to attend an institution of higher education as defined in RCW 28B.92.030.

(8) Unless the context clearly requires otherwise, the definitions provided in RCW 43.88.020 apply to this chapter. [2011 c 304 § 2; 2000 c 90 § 1; 1997 c 168 § 1.]

Additional notes found at www.leg.wa.gov

43.88C.040 Sentencing information system—Sentencing manual. (1) The caseload forecast council shall develop and maintain a computerized adult and juvenile sentencing information system consisting of offender, offense, history, and sentence information entered from the judgment and sentence forms for all adult felons.

(2) As part of its duties in maintaining the sentencing information system, the caseload forecast council shall:

(a) On an annual basis, publish a statistical summary of adult felony sentencing and juvenile dispositions;

(b) Publish and maintain an adult felony sentencing manual; and

(c) Publish and maintain a juvenile sentencing manual.

(3) The sentencing manuals are intended only as a guide to assist practitioners in determining appropriate sentencing ranges. The manuals are not a substitute for the actual statutes, which list the sentencing ranges, or for any other information contained within this chapter. The caseload forecast council is not liable for errors or omissions in the manual, for sentences that may be inappropriately calculated as a result of a practitioner's or court's reliance on the manual, or for any other written or verbal information provided by the caseload forecast council or its staff related to adult or juvenile sentencing.

(4) In publishing materials required by this section, the caseload forecast council shall make the materials available on its web site. The caseload forecast council may charge a

reasonable cost for producing and distributing hard copies of any materials. [2011 1st sp.s. c 40 § 28.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

43.88C.050 Research staff. The caseload forecast council shall appoint a research staff of sufficient size and with sufficient resources to accomplish its duties. The caseload forecast council may request from the administrative office of the courts and the department of social and health services such data, information, and data processing assistance as it may need to accomplish its duties, and such services shall be provided without cost to the caseload forecast council. [2011 1st sp.s. c 40 § 29.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Chapter 43.99H RCW

FINANCING FOR APPROPRIATIONS— 1989-1991 BIENNIUM

Sections

43.99H.070 East capitol campus construction account—Additional means of reimbursement.

43.99H.070 East capitol campus construction account—Additional means of reimbursement. In addition to any other charges authorized by law and to assist in the reimbursement of principal and interest payments on bonds issued for the purposes of RCW 43.99H.020(15), the following revenues may be collected:

(1) The director of enterprise services may assess a charge against each state board, commission, agency, office, department, activity, or other occupant of the facility or building constructed with bonds issued for the purposes of RCW 43.99H.020(15) for payment of a proportion of costs for each square foot of floor space assigned to or occupied by the entity. Payment of the amount billed to the entity for such occupancy shall be made quarterly during each fiscal year. The director of enterprise services shall deposit the payment in the capitol campus reserve account.

(2) The director of enterprise services may pledge a portion of the parking rental income collected by the department of enterprise services from parking space developed as a part of the facility constructed with bonds issued for the purposes of RCW 43.99H.020(15). The pledged portion of this income shall be deposited in the capitol campus reserve account. The unpledged portion of this income shall continue to be deposited in the state vehicle parking account.

(3) The state treasurer shall transfer four million dollars from the capitol building construction account to the capitol campus reserve account each fiscal year from 1990 to 1995. Beginning in fiscal year 1996, the director of enterprise services, in consultation with the state finance committee, shall determine the necessary amount for the state treasurer to transfer from the capitol building construction account to the capitol campus reserve account for the purpose of repayment of the general fund of the costs of the bonds issued for the purposes of RCW 43.99H.020(15).

(4) Any remaining balance in the state building and parking bond redemption account after the final debt service pay-

ment shall be transferred to the capitol campus reserve account. [2011 1st sp.s. c 43 § 256; 1995 c 215 § 6; 1989 1st ex.s. c 14 § 7.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Chapter 43.99I RCW
FINANCING FOR APPROPRIATIONS—
1991-1993 BIENNIUM

Sections

43.99I.040 Reimbursement of general fund.
43.99I.105 Bond authorization expiration.

43.99I.040 Reimbursement of general fund. (1) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99I.020(4), the state treasurer shall transfer from property taxes in the state general fund levied for this support of the common schools under RCW 84.52.065 to the general fund of the state treasury for unrestricted use the amount computed in RCW 43.99I.030 for the bonds issued for the purposes of RCW 43.99I.020(4).

(2) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99I.020(5), the state treasurer shall transfer from higher education operating fees deposited in the general fund to the general fund of the state treasury for unrestricted use, or if chapter 231, Laws of 1992 (Senate Bill No. 6285) becomes law and changes the disposition of higher education operating fees from the general fund to another account, the state treasurer shall transfer the proportional share from the University of Washington operating fees account, the Washington State University operating fees account, and the Central Washington University operating fees account the amount computed in RCW 43.99I.030 for the bonds issued for the purposes of RCW 43.99I.020(6).

(3) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99I.020(6), the state treasurer shall transfer from the data processing revolving fund created in RCW 43.19.791 to the general fund of the state treasury the amount computed in RCW 43.99I.030 for the bonds issued for the purposes of RCW 43.99I.020(6).

(4) On each date on which any interest or principal and interest payment is due on bonds issued for the purpose of RCW 43.99I.020(7), the Washington state dairy products commission shall cause the amount computed in RCW 43.99I.030 for the bonds issued for the purposes of RCW 43.99I.020(7) to be paid out of the commission's general operating fund to the state treasurer for deposit into the general fund of the state treasury.

(5) The higher education operating fee accounts for the University of Washington, Washington State University, and Central Washington University established by chapter 231, Laws of 1992 and repealed by chapter 18, Laws of 1993 1st sp. sess. are reestablished in the state treasury for purposes of fulfilling debt service reimbursement transfers to the general fund required by bond resolutions and covenants for bonds issued for purposes of RCW 43.99I.020(5).

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(6) For bonds issued for purposes of RCW 43.99I.020(5), on each date on which any interest or principal and interest payment is due, the board of regents or board of trustees of the University of Washington, Washington State University, or Central Washington University shall cause the amount as determined by the state treasurer to be paid out of the local operating fee account for deposit by the universities into the state treasury higher education operating fee accounts. The state treasurer shall transfer the proportional share from the University of Washington operating fees account, the Washington State University operating fees account, and the Central Washington University operating fees account the amount computed in RCW 43.99I.030 for the bonds issued for the purposes of RCW 43.99I.020(6) to reimburse the general fund. [2011 1st sp.s. c 43 § 612; 1997 c 456 § 39; 1992 c 235 § 3; 1991 sp.s. c 31 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.99I.105 Bond authorization expiration. If any bonds authorized in this chapter have not been issued by June 30, 2013, the authority of the state finance committee to issue such remaining unissued bonds shall expire June 30, 2013. [2011 1st sp.s. c 49 § 7006.]

Effective date—2011 1st sp.s. c 49: See note following RCW 43.99X.010.

Chapter 43.99N RCW

STADIUM AND EXHIBITION CENTER BOND ISSUE
(REFERENDUM 48)

Sections

43.99N.130 Bond authorization expiration.

43.99N.130 Bond authorization expiration. If any bonds authorized in this chapter have not been issued by June 30, 2013, the authority of the state finance committee to issue such remaining unissued bonds shall expire June 30, 2013. [2011 1st sp.s. c 49 § 7007.]

Effective date—2011 1st sp.s. c 49: See note following RCW 43.99X.010.

Chapter 43.99P RCW

FINANCING FOR APPROPRIATIONS—
1999-2001 BIENNIUM

Sections

43.99P.080 Bond authorization expiration.

43.99P.080 Bond authorization expiration. If any bonds authorized in this chapter have not been issued by June 30, 2013, the authority of the state finance committee to issue such remaining unissued bonds shall expire June 30, 2013. [2011 1st sp.s. c 49 § 7008.]

Effective date—2011 1st sp.s. c 49: See note following RCW 43.99X.010.

Chapter 43.99Q RCW
FINANCING FOR APPROPRIATIONS—
2001-2003 BIENNIUM

Sections

- 43.99Q.130 Legislative building rehabilitation project—General obligation bonds—Expiration.
43.99Q.180 Bond authorization expiration.

43.99Q.130 Legislative building rehabilitation project—General obligation bonds—Expiration. (1) For the purpose of providing funds for the planning, design, construction, and other necessary costs for the rehabilitation of the state legislative building, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of eighty-two million five hundred ten thousand dollars or as much thereof as may be required to finance the rehabilitation and improvements to the legislative building and all costs incidental thereto. The approved rehabilitation plan includes costs associated with earthquake repairs and future earthquake mitigation and allows for associated relocation costs and the acquisition of appropriate relocation space. Bonds authorized in this section may be sold at a price the state finance committee determines. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. The proceeds of the sale of the bonds issued for the purposes of this section shall be deposited in the capitol historic district construction account hereby created in the state treasury. These proceeds shall be used exclusively for the purposes specified in this section and for the payment of expenses incurred in the issuance and sale of the bonds issued for the purposes of this section, and shall be administered by the office of financial management subject to legislative appropriation.

(2) If any bonds authorized in this chapter have not been issued by June 30, 2013, the authority of the state finance committee to issue such remaining unissued bonds shall expire June 30, 2013. [2011 1st sp.s. c 49 § 7009; 2009 c 500 § 10; 2001 2nd sp.s. c 9 § 14.]

Effective date—2011 1st sp.s. c 49: See note following RCW 43.99X.010.

Effective date—2009 c 500: See note following RCW 39.42.070.

43.99Q.180 Bond authorization expiration. If any bonds authorized pursuant to RCW 43.99Q.020(5) have not been issued by June 30, 2013, the authority of the state finance committee to issue such remaining unissued bonds shall expire June 30, 2013. [2011 1st sp.s. c 49 § 7010.]

Effective date—2011 1st sp.s. c 49: See note following RCW 43.99X.010.

Chapter 43.99X RCW
FINANCING FOR APPROPRIATIONS—
2011-2013 BIENNIUM

Sections

- 43.99X.010 General obligation bonds for capital and operating appropriations acts.
43.99X.020 Conditions and limitations.
43.99X.030 Retirement of bonds—Reimbursement of general fund from debt-limit general fund bond retirement account.
43.99X.040 Pledge and promise—Remedies.

- 43.99X.050 Payment of principal and interest—Additional means for raising money.

43.99X.010 General obligation bonds for capital and operating appropriations acts. For the purpose of providing funds to finance the projects described and authorized by the legislature in the capital and operating appropriations acts for the 2009-2011 and 2011-2013 fiscal bienniums, and all costs incidental thereto, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one billion one hundred twenty-two million dollars, or as much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. [2011 1st sp.s. c 49 § 7001.]

Effective date—2011 1st sp.s. c 49: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 2011]." [2011 1st sp.s. c 49 § 8014.]

43.99X.020 Conditions and limitations. (1) The proceeds from the sale of the bonds authorized in RCW 43.99X.010 shall be deposited in the state building construction account created by RCW 43.83.020. The proceeds shall be transferred as follows:

(a) One billion seven million dollars to remain in the state building construction account created by RCW 43.83.020;

(b) Twenty million two hundred thousand dollars to the outdoor recreation account created by RCW 79A.25.060;

(c) Twenty million two hundred thousand dollars to the habitat conservation account created by RCW 79A.15.020;

(d) Eight hundred thousand dollars to the riparian protection account created by RCW 79A.15.120;

(e) Eight hundred thousand dollars to the farmlands preservation account created by RCW 79A.15.130;

(f) Fifty-one million dollars to the state taxable building construction account. All receipts from taxable bond issues are to be deposited into the account. If the state finance committee deems it necessary or advantageous to issue more than the amount specified in this subsection (1)(f) as taxable bonds in order to comply with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds or in order to reduce the total financing costs for bonds issued, the proceeds of such additional taxable bonds shall be transferred to the state taxable building construction account in lieu of any transfer otherwise provided by this section. If the state finance committee determines that a portion of the amount specified in this subsection (1)(f) as taxable bonds may be issued as nontaxable bonds in compliance with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds, then such bond proceeds shall be transferred to the state building construction account in lieu of the transfer to the state taxable building construction account otherwise provided by this subsection (1)(f). The state treasurer shall submit written notice to the director of financial management if it is determined that any such additional transfer to the state taxable building construction account is necessary or that a transfer

from the state taxable building construction account to the state building construction account may be made. Moneys in the account may be spent only after appropriation.

(2) These proceeds shall be used exclusively for the purposes specified in this section and for the payment of expenses incurred in the issuance and sale of the bonds issued for the purposes of this section, and shall be administered by the office of financial management subject to legislative appropriation. [2011 1st sp.s. c 49 § 7002.]

Effective date—2011 1st sp.s. c 49: See note following RCW 43.99X.010.

43.99X.030 Retirement of bonds—Reimbursement of general fund from debt-limit general fund bond retirement account. (1) The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 43.99X.020(1) (a) through (f).

(2) The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in RCW 43.99X.020(1) (a) through (f).

(3) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99X.020(1) (a) through (f), the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date. [2011 1st sp.s. c 49 § 7003.]

Effective date—2011 1st sp.s. c 49: See note following RCW 43.99X.010.

43.99X.040 Pledge and promise—Remedies. (1) Bonds issued under RCW 43.99X.010 through 43.99X.030 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

(2) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2011 1st sp.s. c 49 § 7004.]

Effective date—2011 1st sp.s. c 49: See note following RCW 43.99X.010.

43.99X.050 Payment of principal and interest—Additional means for raising money. The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 43.99X.010, and RCW 43.99X.020 and 43.99X.030 shall not be deemed to provide an exclusive method for the payment. [2011 1st sp.s. c 49 § 7005.]

Effective date—2011 1st sp.s. c 49: See note following RCW 43.99X.010.

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Chapter 43.101 RCW
CRIMINAL JUSTICE TRAINING COMMISSION—
EDUCATION AND TRAINING
STANDARDS BOARDS

Sections

43.101.080	Commission powers and duties—Rules and regulations.
43.101.095	Peace officer certification.
43.101.105	Denial or revocation of peace officer certification.
43.101.200	Law enforcement personnel—Basic law enforcement training required—Commission to provide.
43.101.419	Motorcycle profiling.

43.101.080 Commission powers and duties—Rules and regulations. The commission shall have all of the following powers:

(1) To meet at such times and places as it may deem proper;

(2) To adopt any rules and regulations as it may deem necessary;

(3) To contract for services as it deems necessary in order to carry out its duties and responsibilities;

(4) To cooperate with and secure the cooperation of any department, agency, or instrumentality in state, county, and city government, and other commissions affected by or concerned with the business of the commission;

(5) To do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the power granted to it;

(6) To select and employ an executive director, and to empower him or her to perform such duties and responsibilities as it may deem necessary;

(7) To assume legal, fiscal, and program responsibility for all training conducted by the commission;

(8) To establish, by rule and regulation, standards for the training of criminal justice personnel where such standards are not prescribed by statute;

(9) To own, establish, and operate, or to contract with other qualified institutions or organizations for the operation of, training and education programs for criminal justice personnel and to purchase, lease, or otherwise acquire, subject to the approval of the *department of general administration, a training facility or facilities necessary to the conducting of such programs;

(10) To establish, by rule and regulation, minimum curriculum standards for all training programs conducted for employed criminal justice personnel;

(11) To review and approve or reject standards for instructors of training programs for criminal justice personnel, and to employ personnel on a temporary basis as instructors without any loss of employee benefits to those instructors;

(12) To direct the development of alternative, innovate, and interdisciplinary training techniques;

(13) To review and approve or reject training programs conducted for criminal justice personnel and rules establishing and prescribing minimum training and education standards recommended by the training standards and education boards;

(14) To allocate financial resources among training and education programs conducted by the commission;

(15) To allocate training facility space among training and education programs conducted by the commission;

(16) To issue diplomas certifying satisfactory completion of any training or education program conducted or approved by the commission to any person so completing such a program;

(17) To provide for the employment of such personnel as may be practical to serve as temporary replacements for any person engaged in a basic training program as defined by the commission;

(18) To establish rules and regulations recommended by the training standards and education boards prescribing minimum standards relating to physical, mental and moral fitness which shall govern the recruitment of criminal justice personnel where such standards are not prescribed by statute or constitutional provision;

(19) To require county, city, or state law enforcement agencies that make a conditional offer of employment to an applicant as a fully commissioned peace officer or a reserve officer to administer a background investigation including a check of criminal history, a psychological examination, and a polygraph test or similar assessment to each applicant, the results of which shall be used by the employer to determine the applicant's suitability for employment as a fully commissioned peace officer or a reserve officer. The background investigation, psychological examination, and the polygraph examination shall be administered in accordance with the requirements of RCW 43.101.095(2). The employing county, city, or state law enforcement agency may require that each peace officer or reserve officer who is required to take a psychological examination and a polygraph or similar test pay a portion of the testing fee based on the actual cost of the test or four hundred dollars, whichever is less. County, city, and state law enforcement agencies may establish a payment plan if they determine that the peace officer or reserve officer does not readily have the means to pay for his or her portion of the testing fee;

(20) To promote positive relationships between law enforcement and the citizens of the state of Washington by allowing commissioners and staff to participate in the "chief for a day program." The executive director shall designate staff who may participate. In furtherance of this purpose, the commission may accept grants of funds and gifts and may use its public facilities for such purpose. At all times, the participation of commissioners and staff shall comply with chapter 42.52 RCW and chapter 292-110 WAC.

All rules and regulations adopted by the commission shall be adopted and administered pursuant to the administrative procedure act, chapter 34.05 RCW, and the open public meetings act, chapter 42.30 RCW. [2011 c 234 § 1; 2008 c 69 § 3; 2005 c 434 § 1; 2001 c 166 § 1; 1982 c 124 § 1; 1975-'76 2nd ex.s. c 17 § 3. Prior: 1975 1st ex.s. c 103 § 1; 1975 1st ex.s. c 82 § 1; 1974 ex.s. c 94 § 8.]

***Reviser's note:** The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Finding—2008 c 69: See note following RCW 43.101.010.

43.101.095 Peace officer certification. (1) As a condition of continuing employment as peace officers, all Washington peace officers: (a) Shall timely obtain certification as peace officers, or timely obtain certification or exemption therefrom, by meeting all requirements of RCW 43.101.200, as that section is administered under the rules of the commis-

sion, as well by meeting any additional requirements under this chapter; and (b) shall maintain the basic certification as peace officers under this chapter.

(2)(a) As a condition of continuing employment for any applicant who has been offered a conditional offer of employment as a fully commissioned peace officer or a reserve officer after July 24, 2005, including any person whose certification has lapsed as a result of a break of more than twenty-four consecutive months in the officer's service as a fully commissioned peace officer or reserve officer, the applicant shall submit to a background investigation including a check of criminal history, a psychological examination, and a polygraph or similar assessment as administered by the county, city, or state law enforcement agency, the results of which shall be used to determine the applicant's suitability for employment as a fully commissioned peace officer or a reserve officer.

(i) The background investigation including a check of criminal history shall be administered by the county, city, or state law enforcement agency that made the conditional offer of employment in compliance with standards established in the rules of the commission.

(ii) The psychological examination shall be administered by a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW, in compliance with standards established in rules of the commission.

(iii) The polygraph test shall be administered by an experienced polygrapher who is a graduate of a polygraph school accredited by the American polygraph association and in compliance with standards established in rules of the commission.

(iv) Any other test or assessment to be administered as part of the background investigation shall be administered in compliance with standards established in rules of the commission.

(b) The employing county, city, or state law enforcement agency may require that each peace officer or reserve officer who is required to take a psychological examination and a polygraph or similar test pay a portion of the testing fee based on the actual cost of the test or four hundred dollars, whichever is less. County, city, and state law enforcement agencies may establish a payment plan if they determine that the peace officer or reserve officer does not readily have the means to pay for his or her portion of the testing fee.

(3) The commission shall certify peace officers who have satisfied, or have been exempted by statute or by rule from, the basic training requirements of RCW 43.101.200 on or before January 1, 2002. Thereafter, the commission may revoke certification pursuant to this chapter.

(4) The commission shall allow a peace officer to retain status as a certified peace officer as long as the officer: (a) Timely meets the basic law enforcement training requirements, or is exempted therefrom, in whole or in part, under RCW 43.101.200 or under rule of the commission; (b) meets or is exempted from any other requirements under this chapter as administered under the rules adopted by the commission; (c) is not denied certification by the commission under this chapter; and (d) has not had certification revoked by the commission.

(5) As a prerequisite to certification, as well as a prerequisite to pursuit of a hearing under RCW 43.101.155, a peace officer must, on a form devised or adopted by the commission, authorize the release to the commission of his or her personnel files, termination papers, criminal investigation files, or other files, papers, or information that are directly related to a certification matter or decertification matter before the commission.

(6) The commission is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with employment by the commission or peace officer certification under this chapter. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited.

(7) For a national criminal history records check, the commission shall require fingerprints be submitted and searched through the Washington state patrol identification and criminal history section. The Washington state patrol shall forward the fingerprints to the federal bureau of investigation. [2011 c 234 § 2; 2009 c 139 § 1; 2008 c 74 § 8; 2005 c 434 § 2; 2001 c 167 § 2.]

Finding—2008 c 74: See note following RCW 51.04.024.

43.101.105 Denial or revocation of peace officer certification. (1) Upon request by a peace officer's employer or on its own initiative, the commission may deny or revoke certification of any peace officer, after written notice and hearing, if a hearing is timely requested by the peace officer under RCW 43.101.155, based upon a finding of one or more of the following conditions:

(a) The peace officer has failed to timely meet all requirements for obtaining a certificate of basic law enforcement training, a certificate of basic law enforcement training equivalency, or a certificate of exemption from the training;

(b) The peace officer has knowingly falsified or omitted material information on an application for training or certification to the commission;

(c) The peace officer has been convicted at any time of a felony offense under the laws of this state or has been convicted of a federal or out-of-state offense comparable to a felony under the laws of this state; except that if a certified peace officer was convicted of a felony before being employed as a peace officer, and the circumstances of the prior felony conviction were fully disclosed to his or her employer before being hired, the commission may revoke certification only with the agreement of the employing law enforcement agency;

(d) The peace officer has been discharged for disqualifying misconduct, the discharge is final, and some or all of the acts or omissions forming the basis for the discharge proceedings occurred on or after January 1, 2002;

(e) The peace officer's certificate was previously issued by administrative error on the part of the commission; or

(f) The peace officer has interfered with an investigation or action for denial or revocation of certificate by: (i) Knowingly making a materially false statement to the commission; or (ii) in any matter under investigation by or otherwise before the commission, tampering with evidence or tampering with or intimidating any witness.

(2) After July 24, 2005, the commission shall deny certification to any applicant who has lost his or her certification as a result of a break in service of more than twenty-four consecutive months if that applicant failed to comply with the requirements set forth in RCW 43.101.080(19) and 43.101.095(2). [2011 c 234 § 3; 2005 c 434 § 3; 2001 c 167 § 3.]

43.101.200 Law enforcement personnel—Basic law enforcement training required—Commission to provide.

(1) All law enforcement personnel, except volunteers, and reserve officers whether paid or unpaid, initially employed on or after January 1, 1978, shall engage in basic law enforcement training which complies with standards adopted by the commission pursuant to RCW 43.101.080. For personnel initially employed before January 1, 1990, such training shall be successfully completed during the first fifteen months of employment of such personnel unless otherwise extended or waived by the commission and shall be requisite to the continuation of such employment. Personnel initially employed on or after January 1, 1990, shall commence basic training during the first six months of employment unless the basic training requirement is otherwise waived or extended by the commission. Successful completion of basic training is requisite to the continuation of employment of such personnel initially employed on or after January 1, 1990.

(2) Except as otherwise provided in this chapter, the commission shall provide the aforementioned training together with necessary facilities, supplies, materials, and the board and room of noncommuting attendees for seven days per week, except during the 2011-2013 fiscal biennium when the employing, county, city[,] or state law enforcement agency shall reimburse the commission for twenty-five percent of the cost of training its personnel. Additionally, to the extent funds are provided for this purpose, the commission shall reimburse to participating law enforcement agencies with ten or less full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training: PROVIDED, That such reimbursement shall include only the actual cost of temporary replacement not to exceed the total amount of salary and benefits received by the replaced officer during his or her training period. [2011 1st sp.s. c 50 § 949; 1997 c 351 § 13. Prior: 1993 sp.s. c 24 § 920; 1993 sp.s. c 21 § 5; 1989 c 299 § 2; 1977 ex.s. c 212 § 2.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Additional notes found at www.leg.wa.gov

43.101.419 Motorcycle profiling. (1) The criminal justice training commission shall ensure that issues related to motorcycle profiling are addressed in basic law enforcement training and offered to in-service law enforcement officers in conjunction with existing training regarding profiling.

(2) Local law enforcement agencies shall add a statement condemning motorcycle profiling to existing policies regarding profiling.

(3) For the purposes of this section, "motorcycle profiling" means the illegal use of the fact that a person rides a motorcycle or wears motorcycle-related paraphernalia as a factor in deciding to stop and question, take enforcement

action, arrest, or search a person or vehicle with or without a legal basis under the United States Constitution or Washington state Constitution. [2011 c 49 § 1.]

Chapter 43.105 RCW

CONSOLIDATED TECHNOLOGY SERVICES AGENCY

(Formerly: Department of Information Services)

Sections

43.105.005	Repealed.
43.105.006	Consolidated technology services agency—Purpose.
43.105.013	Repealed.
43.105.019	Repealed.
43.105.020	Definitions.
43.105.032	Repealed.
43.105.041	Powers and duties of board.
43.105.047	Agency created—Appointment of director—Director's duties.
43.105.052	Powers and duties of agency.
43.105.057	Rule-making authority.
43.105.060	Contracts by state and local agencies with agency.
43.105.080	Recodified as RCW 43.19.791.
43.105.095	Repealed.
43.105.105	Repealed.
43.105.111	Performance targets—Plans for achieving goals—Quarterly reports to governor.
43.105.160	Repealed.
43.105.170	Repealed.
43.105.172	Recodified as RCW 43.41A.110.
43.105.180	Repealed.
43.105.190	Repealed.
43.105.200	Repealed.
43.105.210	Repealed.
43.105.250	Recodified as RCW 43.41A.115.
43.105.260	Recodified as RCW 43.41A.120.
43.105.270	Recodified as RCW 43.41A.125.
43.105.280	Recodified as RCW 43.41A.130.
43.105.290	Recodified as RCW 43.41A.135.
43.105.300	Repealed.
43.105.310	Recodified as RCW 43.41A.140.
43.105.320	Recodified as RCW 43.19.794.
43.105.330	State interoperability executive committee.
43.105.340	Consumer protection web site.
43.105.360	Repealed.
43.105.370	Recodified as RCW 43.330.400.
43.105.372	Recodified as RCW 43.330.403.
43.105.374	Recodified as RCW 43.330.406.
43.105.376	Recodified as RCW 43.330.409.
43.105.380	Recodified as RCW 43.330.412.
43.105.382	Recodified as RCW 43.330.415.
43.105.390	Recodified as RCW 43.330.418.
43.105.400	Recodified as RCW 43.330.421.
43.105.410	Recodified as RCW 43.19.797.
43.105.805	Repealed.
43.105.815	Repealed.
43.105.820	Repealed.
43.105.835	Recodified as RCW 43.41A.105.

43.105.005 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.006 Consolidated technology services agency—Purpose. To achieve maximum benefit from advances in information technology the state establishes a centralized provider and procurer of certain information technology services as an agency to support the needs of state agencies. This agency shall be known as the consolidated technology services agency. To ensure maximum benefit to the state, state agencies shall rely on the consolidated technology services agency for those services with a business case of broad use, uniformity, scalability, and price sensitivity to aggregation and volume.

To successfully meet agency needs and meet its obligation as the primary service provider for these services, the consolidated technology services agency must offer high quality services at the lowest possible price. It must be able to attract an adaptable and competitive workforce, be authorized to procure services where the business case justifies it, and be accountable to its customers for the efficient and effective delivery of critical business services.

The consolidated technology services agency is established as an agency in state government. The agency is established with clear accountability to the agencies it serves and to the public. This accountability will come through enhanced transparency in the agency's operation and performance. The agency is also established with broad flexibility to adapt its operations and service catalog to address the needs of customer agencies, and to do so in the most cost-effective ways. [2011 1st sp.s. c 43 § 801.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.105.013 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.019 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

(1) "Agency" means the consolidated technology services agency.

(2) "Customer agencies" means all entities that purchase or use information technology resources, telecommunications, or services from the consolidated technology services agency.

(3) "Director" means the director of the consolidated technology services agency.

(4) "Equipment" means the machines, devices, and transmission facilities used in information processing, including but not limited to computers, terminals, telephones, wireless communications system facilities, cables, and any physical facility necessary for the operation of such equipment.

(5) "Enterprise architecture" means an ongoing program for translating business vision and strategy into effective enterprise change. It is a continuous activity. Enterprise architecture creates, communicates, and improves the key principles and models that describe the enterprise's future state and enable its evolution.

(6) "Information technology" includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.

(7) "Information technology portfolio" or "portfolio" means a strategic management process documenting relationships between agency missions and information technology and telecommunications investments.

(8) "Local governments" includes all municipal and quasi municipal corporations and political subdivisions, and all agencies of such corporations and subdivisions authorized to contract separately.

(9) "Oversight" means a process of comprehensive risk analysis and management designed to ensure optimum use of information technology resources and telecommunications.

(10) "Proprietary software" means that software offered for sale or license.

(11) "Telecommunications" includes, but is not limited to, wireless or wired systems for transport of voice, video, and data communications, network systems, requisite facilities, equipment, system controls, simulation, electronic commerce, and all related interactions between people and machines. "Telecommunications" does not include public safety communications. [2011 1st sp.s. c 43 § 802; 2010 1st sp.s. c 7 § 64. Prior: 2009 c 565 § 32; 2009 c 509 § 7; 2009 c 486 § 14; 2003 c 18 § 2; prior: 1999 c 285 § 1; 1999 c 80 § 1; 1993 c 280 § 78; 1990 c 208 § 3; 1987 c 504 § 3; 1973 1st ex.s. c 219 § 3; 1967 ex.s. c 115 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Findings—Intent—Purpose—Effective date—2009 c 509: See notes following RCW 43.105.370.

Conflict with federal requirements—2009 c 486: See note following RCW 28B.30.530.

Intent—2009 c 486: See note following RCW 39.29.006.

Intent—Finding—2003 c 18: "It is the intent of the legislature to ensure that the state's considerable investment in radio communications facilities, and the radio spectrum that is licensed to government entities in the state, are managed in a way that promotes to the maximum extent the health and safety of the state's citizens and the economic efficiencies of coordinated planning, development, management, maintenance, accountability, and performance. The legislature finds that such coordination is essential for disaster preparedness, emergency management, and public safety, and that such coordination will result in more cost-effective use of state resources and improved government services." [2003 c 18 § 1.]

Effective date—2003 c 18: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 18 § 6.]

Additional notes found at www.leg.wa.gov

43.105.032 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.041 Powers and duties of board. (1) The board shall have the following powers and duties related to information services:

(a) To develop standards and procedures governing the acquisition and disposition of equipment, proprietary software and purchased services, licensing of the radio spectrum by or on behalf of state agencies, and confidentiality of computerized data;

(b) To purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services: PROVIDED, That, agencies and institutions of state government are expressly prohibited from acquiring or disposing of equipment, proprietary software, and purchased services without such delegation of authority. The acquisition and disposition of equipment, proprietary software, and purchased services is exempt from RCW 43.19.1919 and, as provided in RCW 43.19.1901, from the provisions of RCW 43.19.190 through 43.19.200, except that the board, the department, and state agencies, as delegated, must post notices of technology procurement bids on the state's common vendor

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registration and bid notification system for (i) goods and purchased services of fifty thousand dollars or greater, and (ii) personal services of ten thousand dollars or greater. This subsection (1)(b) does not apply to the legislative branch;

(c) To develop statewide or interagency technical policies, standards, and procedures;

(d) To review and approve standards and common specifications for new or expanded telecommunications networks proposed by agencies, public postsecondary education institutions, educational service districts, or statewide or regional providers of K-12 information technology services, and to assure the cost-effective development and incremental implementation of a statewide video telecommunications system to serve: Public schools; educational service districts; vocational-technical institutes; community colleges; colleges and universities; state and local government; and the general public through public affairs programming;

(e) To provide direction concerning strategic planning goals and objectives for the state. The board shall seek input from the legislature and the judiciary;

(f) To develop and implement a process for the resolution of appeals by:

(i) Vendors concerning the conduct of an acquisition process by an agency or the department; or

(ii) A customer agency concerning the provision of services by the department or by other state agency providers;

(g) To establish policies for the periodic review by the department of agency performance which may include but are not limited to analysis of:

(i) Planning, management, control, and use of information services;

(ii) Training and education; and

(iii) Project management;

(h) To set its meeting schedules and convene at scheduled times, or meet at the request of a majority of its members, the chair, or the director;

(i) To review and approve that portion of the department's budget requests that provides for support to the board; and

(j) To develop procurement policies and procedures, such as unbundled contracting and subcontracting, that encourage and facilitate the purchase of products and services by state agencies and institutions from Washington small businesses to the maximum extent practicable and consistent with international trade agreement commitments.

(2) Statewide technical standards to promote and facilitate electronic information sharing and access are an essential component of acceptable and reliable public access service and complement content-related standards designed to meet those goals. The board shall:

(a) Establish technical standards to facilitate electronic access to government information and interoperability of information systems, including wireless communications systems. Local governments are strongly encouraged to follow the standards established by the board; and

(b) Require agencies to consider electronic public access needs when planning new information systems or major upgrades of systems.

In developing these standards, the board is encouraged to include the state library, state archives, and appropriate representatives of state and local government.

(3)(a) The board has the duty to govern, operate, and oversee the technical design, implementation, and operation of the K-20 network including, but not limited to, the following duties: Establishment and implementation of K-20 network technical policy, including technical standards and conditions of use; review and approval of network design; procurement of shared network services and equipment; and resolving user/provider disputes concerning technical matters. The board shall delegate general operational and technical oversight to the department as appropriate.

(b) The board has the authority to adopt rules under chapter 34.05 RCW to implement the provisions regarding the technical operations and conditions of use of the K-20 network. [2011 c 358 § 6; 2010 1st sp.s. c 7 § 65; 2009 c 486 § 13; 2003 c 18 § 3; 1999 c 285 § 5. Prior: 1996 c 171 § 8; 1996 c 137 § 12; (1996 c 171 § 7, 1996 c 137 § 11, and 1995 2nd sp.s. c 14 § 512 expired June 30, 1997); 1990 c 208 § 6; 1987 c 504 § 5; 1983 c 3 § 115; 1973 1st ex.s. c 219 § 6.]

Reviser's note: RCW 43.105.041 was also repealed by 2011 1st sp.s. c 43 § 1013, effective October 1, 2011, without cognizance of its amendment by 2011 c 358 § 6. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Findings—Intent—2011 c 358: See note following RCW 43.19.725.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Intent—2009 c 486: See note following RCW 39.29.006.

Conflict with federal requirements—2009 c 486: See note following RCW 28B.30.530.

Intent—Finding—Effective date—2003 c 18: See notes following RCW 43.105.020.

Additional notes found at www.leg.wa.gov

43.105.041 Powers and duties of board. [2010 1st sp.s. c 7 § 65; 2009 c 486 § 13; 2003 c 18 § 3; 1999 c 285 § 5. Prior: 1996 c 171 § 8; 1996 c 137 § 12; (1996 c 171 § 7, 1996 c 137 § 11, and 1995 2nd sp.s. c 14 § 512 expired June 30, 1997); 1990 c 208 § 6; 1987 c 504 § 5; 1983 c 3 § 115; 1973 1st ex.s. c 219 § 6.] Repealed by 2011 1st sp.s. c 43 § 1013, effective October 1, 2011.

Reviser's note: RCW 43.105.041 was also amended by 2011 c 358 § 6 without cognizance of its repeal by 2011 1st sp.s. c 43 § 1013, effective October 1, 2011. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

43.105.047 Agency created—Appointment of director—Director's duties. There is created the consolidated technology services agency, an agency of state government. The agency shall be headed by a director appointed by the governor with the consent of the senate. The director shall serve at the governor's pleasure and shall receive such salary as determined by the governor. The director shall:

(1) Appoint a confidential secretary and such deputy and assistant directors as needed to administer the agency; and

(2) Appoint such professional, technical, and clerical assistants and employees as may be necessary to perform the duties imposed by this chapter. [2011 1st sp.s. c 43 § 803; 1999 c 80 § 5; 1992 c 20 § 9; 1987 c 504 § 6.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Civil service exemptions: RCW 41.06.094.

Additional notes found at www.leg.wa.gov

43.105.052 Powers and duties of agency. The agency shall:

(1) Make available information services to public agencies and public benefit nonprofit corporations. For the purposes of this section "public agency" means any agency of this state or another state; any political subdivision, or unit of local government of this state or another state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of the United States; and any Indian tribe recognized as such by the federal government and "public benefit nonprofit corporation" means a public benefit nonprofit corporation as defined in RCW 24.03.005 that is receiving local, state, or federal funds either directly or through a public agency other than an Indian tribe or political subdivision of another state;

(2) Establish rates and fees for services provided by the agency. A billing rate plan shall be developed for a two-year period to coincide with the budgeting process. The rate plan shall be subject to review at least annually by the office of financial management. The rate plan shall show the proposed rates by each cost center and will show the components of the rate structure as mutually determined by the agency and the office of financial management. The rate plan and any adjustments to rates shall be approved by the office of financial management;

(3) With the advice of the board and customer agencies, develop a state strategic information technology plan and performance reports as required under RCW 43.41A.030;

(4) Develop plans for the agency's achievement of state-wide goals and objectives set forth in the state strategic information technology plan required under RCW 43.41A.030; and

(5) Perform all other matters and things necessary to carry out the purposes and provisions of this chapter. [2011 1st sp.s. c 43 § 804; 2010 1st sp.s. c 7 § 16; 2000 c 180 § 1; 1999 c 80 § 6; 1993 c 281 § 53; 1992 c 20 § 10; 1990 c 208 § 7; 1987 c 504 § 8.]

Reviser's note: 2011 1st sp.s. c 43 § 1012 directed this section to be recodified into chapter 43.41A RCW, but that appears to be a drafting error.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Additional notes found at www.leg.wa.gov

43.105.057 Rule-making authority. The agency shall adopt rules as necessary under chapter 34.05 RCW to implement the provisions of this chapter. [2011 1st sp.s. c 43 § 807; 1992 c 20 § 11; 1990 c 208 § 13.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.105.060 Contracts by state and local agencies with agency. State and local government agencies are authorized to enter into any contracts with the agency which may be necessary or desirable to effectuate the purposes and policies of this chapter or for maximum utilization of facilities and services which are the subject of this chapter. [2011 1st sp.s. c 43 § 808; 1987 c 504 § 10; 1973 1st ex.s. c 219 § 9; 1967 ex.s. c 115 § 6.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

43.105.080 Recodified as RCW 43.19.791. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.095 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.105 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.111 Performance targets—Plans for achieving goals—Quarterly reports to governor. The director shall set performance targets and approve plans for achieving measurable and specific goals for the agency. By January 2012, the appropriate organizational performance and accountability measures and performance targets shall be submitted to the governor. These measures and targets shall include measures of performance demonstrating specific and measurable improvements related to service delivery and costs, operational efficiencies, and overall customer satisfac-

tion. The agency shall develop a dashboard of key performance measures that will be updated quarterly and made available on the agency public web site.

The director shall report to the governor on agency performance at least quarterly. The reports shall be included on the agency's web site and accessible to the public. [2011 1st sp.s. c 43 § 806.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.105.160 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.170 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.172 Recodified as RCW 43.41A.110. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.180 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.190 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.200 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.210 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.250 Recodified as RCW 43.41A.115. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.260 Recodified as RCW 43.41A.120. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.270 Recodified as RCW 43.41A.125. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.280 Recodified as RCW 43.41A.130. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.290 Recodified as RCW 43.41A.135. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.300 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.310 Recodified as RCW 43.41A.140. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.320 Recodified as RCW 43.19.794. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.330 State interoperability executive committee. (1) The board shall appoint a state interoperability executive committee, the membership of which must include, but not be limited to, representatives of the military department, the Washington state patrol, the department of transportation, the department of information services, the department of natural resources, city and county governments, state and local fire chiefs, police chiefs, and sheriffs, and state and local emergency management directors. The chair and legislative members of the board will serve as nonvoting ex officio members of the committee. Voting membership may not exceed fifteen members.

(2) The chair of the board shall appoint the chair of the committee from among the voting members of the committee.

(3) The state interoperability executive committee has the following responsibilities:

(a) Develop policies and make recommendations to the board for technical standards for state wireless radio communications systems, including emergency communications systems. The standards must address, among other things, the interoperability of systems, taking into account both existing and future systems and technologies;

(b) Coordinate and manage on behalf of the board the licensing and use of state-designated and state-licensed radio frequencies, including the spectrum used for public safety and emergency communications, and serve as the point of contact with the federal communications commission on matters relating to allocation, use, and licensing of radio spectrum;

(c) Seek support, including possible federal or other funding, for state-sponsored wireless communications systems;

(d) Develop recommendations for legislation that may be required to promote interoperability of state wireless communications systems;

(e) Foster cooperation and coordination among public safety and emergency response organizations;

(f) Work with wireless communications groups and associations to ensure interoperability among all public safety and emergency response wireless communications systems; and

(g) Perform such other duties as may be assigned by the board to promote interoperability of wireless communications systems.

(4) During the 2011-2013 fiscal biennium, the requirement that any state or local entity must purchase radios or communication systems that are the P25 communication standard is suspended. [2011 c 367 § 711; 2006 c 76 § 2; 2003 c 18 § 4.]

Reviser's note: RCW 43.105.330 was also repealed by 2011 c 43 § 1013, effective October 1, 2011, without cognizance of its amendment by 2011 c 367 § 711. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Effective date—2011 c 367: See note following RCW 47.29.170.

Finding—Intent—2006 c 76: "The legislature finds that local governments need to have interoperable communications to ensure the public safety and welfare of all citizens in the state of Washington. In light of recent catastrophic events around the world, including in the United States, it is now more important than ever that all responders be able to communicate clearly and without interference or malfunction.

The legislature has learned that numerous states, the federal government, and some international governments have adopted the project-25 standard for interoperable communications. Local governments in Washington have started to purchase the project-25 interoperable communication[s] standard equipment. In order to ensure that local governments continue to make smart purchasing decisions, they need certainty that the purchases will be interoperable with state equipment and that the state will adopt the national project-25 standards. It is the intent of this act to provide certainty to local governments that a statewide project-25 interoperable communications system will be in place throughout Washington in the near future, and the investments they are making are advantageous to the original intent of interoperable communications, thus ensuring the safety and welfare of Washington's citizens." [2006 c 76 § 1.]

Inventory—Statewide public safety communications plan—2003 c 18: "(1) The state interoperability executive committee shall take inventory of and evaluate all state and local government-owned public safety communications systems, and prepare a statewide public safety communications plan. The plan must set forth recommendations for executive and legislative action to insure that public safety communications systems can communicate

with one another and conform to federal law and regulations governing emergency communications systems and spectrum allocation. The plan must include specific goals for improving interoperability of public safety communications systems and identifiable benchmarks for achieving those goals.

(2) The committee shall present the inventory and plan required in subsection (1) of this section to the board and appropriate legislative committees as follows:

(a) By December 31, 2003, an inventory of state government-operated public safety communications systems;

(b) By July 31, 2004, an inventory of all public safety communications systems in the state;

(c) By March 31, 2004, an interim statewide public safety communications plan; and

(d) By December 31, 2004, a final statewide public safety communications plan.

(3) The committee shall consult regularly with the joint legislative audit and review committee and the legislative evaluation and accounting program committee while developing the inventory and plan under this section." [2003 c 18 § 5.]

Intent—Finding—Effective date—2003 c 18: See notes following RCW 43.105.020.

43.105.330 State interoperability executive committee. [2006 c 76 § 2; 2003 c 18 § 4.] Repealed by 2011 1st sp.s. c 43 § 1013, effective October 1, 2011.

Reviser's note: RCW 43.105.330 was also amended by 2011 c 367 § 711 without cognizance of its repeal by 2011 1st sp.s. c 43 § 1013, effective October 1, 2011. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

43.105.340 Consumer protection web site. (1) The department shall coordinate among state agencies to develop a consumer protection web site. The web site shall serve as a one-stop web site for consumer information. At a minimum, the web site must provide links to information on:

(a) Insurance information provided by the office of the insurance commissioner, including information on how to file consumer complaints against insurance companies, how to look up authorized insurers, and how to learn more about health insurance benefits;

(b) Child care information provided by the department of early learning, including how to select a child care provider, how child care providers are rated, and information about product recalls;

(c) Financial information provided by the department of financial institutions, including consumer information on financial fraud, investing, credit, and enforcement actions;

(d) Health care information provided by the department of health, including health care provider listings and quality assurance information;

(e) Home care information provided by the department, including information to assist consumers in finding an in-home provider;

(f) Licensing information provided by the department of licensing, including information regarding business, vehicle, and professional licensing; and

(g) Other information available on existing state agency web sites that could be a helpful resource for consumers.

(2) By July 1, 2008, state agencies shall report to the department on whether they maintain resources for consumers that could be made available through the consumer protection web site.

(3) By September 1, 2008, the department shall make the consumer protection web site available to the public.

(4) After September 1, 2008, the department, in coordination with other state agencies, shall develop a plan on how to build upon the consumer protection web site to create a consumer protection portal. The plan must also include an examination of the feasibility of developing a toll-free information line to support the consumer protection portal. The plan must be submitted to the governor and the appropriate committees of the legislature by December 1, 2008. [2011 1st sp.s. c 21 § 12; 2008 c 151 § 2.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Findings—2008 c 151: "The legislature finds that in an era of consumer product recalls, increasing state emphasis on quality ratings and accountability, and decreasing resources at the federal level for consumer protection, there may be a gap in outreach to consumers in the state. The legislature further finds that many state agencies provide helpful information to consumers, but consumers may not always know where to look to find such information. To remedy this potential information gap, the legislature declares that a "one-stop" consumer protection web site should be created so that consumers in Washington state have access to clear and appropriate information regarding consumer services that are available to them across state government." [2008 c 151 § 1.]

43.105.360 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.370 Recodified as RCW 43.330.400. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.372 Recodified as RCW 43.330.403. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.374 Recodified as RCW 43.330.406. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.376 Recodified as RCW 43.330.409. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.380 Recodified as RCW 43.330.412. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.382 Recodified as RCW 43.330.415. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.390 Recodified as RCW 43.330.418. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.400 Recodified as RCW 43.330.421. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.410 Recodified as RCW 43.19.797. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.805 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.815 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.820 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.835 Recodified as RCW 43.41A.105. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.121 RCW

COUNCIL FOR CHILDREN AND FAMILIES

Sections

43.121.010	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.015	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.020	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.030	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.040	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.050	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.060	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.070	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.080	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.100	Contributions, grants, gifts—Depository for and disbursement and expenditure control of moneys received—Children's trust fund. (<i>Effective until July 1, 2012.</i>)
43.121.100	Contributions, grants, gifts—Depository for and disbursement and expenditure control of moneys received—Children's trust fund. (<i>Effective July 1, 2012.</i>)
43.121.110	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.120	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.130	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.140	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.150	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.160	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.185	Repealed. (<i>Effective June 30, 2012.</i>)
43.121.910	Repealed. (<i>Effective June 30, 2012.</i>)

43.121.010 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.015 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.020 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.030 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.040 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.050 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.060 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.070 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.080 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.100 Contributions, grants, gifts—Depository for and disbursement and expenditure control of moneys received—Children's trust fund. (*Effective until July 1, 2012.*) The council may accept contributions, grants, or gifts in cash or otherwise, including funds generated by the sale of "heirloom" birth certificates under chapter 70.58 RCW from persons, associations, or corporations and funds generated through the issuance of the "Keep Kids Safe" license plate under chapter 46.18 RCW. All moneys received by the council or any employee thereof from contributions, grants, or gifts and not through appropriation by the legislature shall be deposited in a depository approved by the state treasurer to be known as the children's trust fund. Disbursements of such funds shall be on the authorization of the council or a duly authorized representative thereof and only for the purposes stated in *RCW 43.121.050. In order to maintain an effective expenditure and revenue control, such funds shall be subject in all respects to chapter 43.88 RCW, but no appropriation shall be required to permit expenditure of such funds. [2011 c 171 § 9; 2005 c 53 § 4; 1987 c 351 § 5; 1984 c 261 § 3; 1982 c 4 § 10.]

***Reviser's note:** RCW 43.121.050 was repealed by 2011 1st sp.s. c 32 § 12, effective June 30, 2012.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Legislative findings—1987 c 351: See note following RCW 70.58.085.

Additional notes found at www.leg.wa.gov

43.121.100 Contributions, grants, gifts—Depository for and disbursement and expenditure control of moneys received—Children's trust fund. (*Effective July 1, 2012.*) Contributions, grants, or gifts in cash or otherwise, including funds generated by the sale of "heirloom" birth certificates under chapter 70.58 RCW from persons, associations, or corporations and funds generated through the issuance of the "Keep Kids Safe" license plate under chapter 46.18 RCW, shall be deposited in a depository approved by the state treasurer to be known as the children's trust fund. Disbursements of such funds shall be on the authorization of the director of the department of early learning beginning July 1, 2012. In order to maintain an effective expenditure and revenue control, such funds shall be subject in all respects to chapter 43.88 RCW, but no appropriation shall be required to permit expenditure of such funds. [2011 1st sp.s. c 32 § 5; 2011 c 171 § 9; 2005 c 53 § 4; 1987 c 351 § 5; 1984 c 261 § 3; 1982 c 4 § 10.]

Effective date—2011 1st sp.s. c 32 § 5: "Section 5 of this act takes effect July 1, 2012." [2011 1st sp.s. c 32 § 17.]

Transition plan—Report to the legislature—2011 1st sp.s. c 32: See note following RCW 70.305.005.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Legislative findings—1987 c 351: See note following RCW 70.58.085.

Additional notes found at www.leg.wa.gov

43.121.110 Repealed. (Effective June 30, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.120 Repealed. (Effective June 30, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.130 Repealed. (Effective June 30, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.140 Repealed. (Effective June 30, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.150 Repealed. (Effective June 30, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.160 Repealed. (Effective June 30, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.185 Repealed. (Effective June 30, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.121.910 Repealed. (Effective June 30, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.130 RCW

ECONOMIC IMPACT ACT— CLOSING OF STATE FACILITIES

Sections

43.130.060 Reimbursement of public employees' retirement system.

43.130.060 Reimbursement of public employees' retirement system. In order to reimburse the public employees' retirement system for any increased costs occasioned by the provisions of this chapter which affect the retirement system, the director of retirement systems shall, within thirty days of the date upon which any affected employee elects to take advantage of the retirement provisions of this chapter, determine the increased present and future cost to the retirement system of such employee's election. Upon the determination of the amount necessary to offset the increased cost, the director of retirement systems shall bill the department of enterprise services for the amount of the increased cost: PROVIDED, That such billing shall not exceed eight hun-

dred sixty-one thousand dollars. Such billing shall be paid by the department as, and the same shall be, a proper charge against any moneys available or appropriated to the department for this purpose. [2011 1st sp.s. c 43 § 458; 1973 2nd ex.s. c 37 § 6.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Chapter 43.131 RCW

WASHINGTON SUNSET ACT OF 1977

Sections

43.131.090 Termination of entity—Procedures—Employee transfers—Property disposition—Funds and moneys—Rules—Contracts. (*Expires June 30, 2015.*)

43.131.401 Repealed.

43.131.402 Repealed.

43.131.411 Repealed.

43.131.412 Repealed.

43.131.090 Termination of entity—Procedures—Employee transfers—Property disposition—Funds and moneys—Rules—Contracts. (*Expires June 30, 2015.*)

Unless the legislature specifies a shorter period of time, a terminated entity shall continue in existence until June 30th of the next succeeding year for the purpose of concluding its affairs: PROVIDED, That the powers and authority of the entity shall not be reduced or otherwise limited during this period. Unless otherwise provided:

(1) All employees of terminated entities classified under chapter 41.06 RCW, the state civil service law, shall be transferred as appropriate or as otherwise provided in the procedures adopted by the human resources director pursuant to RCW 41.06.150;

(2) All documents and papers, equipment, or other tangible property in the possession of the terminated entity shall be delivered to the custody of the entity assuming the responsibilities of the terminated entity or if such responsibilities have been eliminated, documents and papers shall be delivered to the state archivist and equipment or other tangible property to the department of enterprise services;

(3) All funds held by, or other moneys due to, the terminated entity shall revert to the fund from which they were appropriated, or if that fund is abolished to the general fund;

(4) Notwithstanding the provisions of RCW 34.05.020, all rules made by a terminated entity shall be repealed, without further action by the entity, at the end of the period provided in this section, unless assumed and reaffirmed by the entity assuming the related legal responsibilities of the terminated entity;

(5) All contractual rights and duties of an entity shall be assigned or delegated to the entity assuming the responsibilities of the terminated entity, or if there is none to such entity as the governor shall direct. [2011 1st sp.s. c 43 § 459; 2002 c 354 § 230; 2000 c 189 § 7; 1993 c 281 § 54; 1983 1st ex.s. c 27 § 4; 1977 ex.s. c 289 § 9.]

Expiration date—2011 1st sp.s. c 43 § 459: "Section 459 of this act expires June 30, 2015." [2011 1st sp.s. c 43 § 482.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Expiration date—2002 c 354 § 230: "Section 230 of this act expires June 30, 2015." [2002 c 354 § 412.]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Additional notes found at www.leg.wa.gov

43.131.401 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.131.402 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.131.411 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.131.412 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.132 RCW

FISCAL IMPACT OF PROPOSED LEGISLATION ON POLITICAL SUBDIVISIONS

Sections

43.132.020 Fiscal notes—Preparation—Contents—Scope—Revisions—Reports.

43.132.020 Fiscal notes—Preparation—Contents—Scope—Revisions—Reports. The director of financial management or the director's designee shall, in cooperation with appropriate legislative committees and legislative staff, establish a mechanism for the determination of the fiscal impact of proposed legislation which if enacted into law would directly or indirectly increase or decrease revenues received or expenditures incurred by counties, cities, towns, or any other units of local government. For purposes of this section, "unit of local government" includes school districts to the extent that the proposed legislation affects school districts in the same manner as it affects other units of local government. Where proposed legislation uniquely affects school districts, a school district fiscal note must be prepared under the process established in RCW 28A.300.0401. The office of financial management shall, when requested by a member of the state legislature, report in writing as to such fiscal impact and said report shall be known as a "fiscal note".

Such fiscal notes shall indicate by fiscal year the total impact on the local governments involved for the first two years the legislation would be in effect and also a cumulative six year forecast of the fiscal impact. Where feasible and applicable, the fiscal note also shall indicate the fiscal impact on each individual county or on a representative sampling of cities, towns, or other units of local government.

A fiscal note as defined in this section shall be provided only upon request of any member of the state legislature. A request for a fiscal note on legislation shall be considered to be a continuing request for a fiscal note on any formal alteration of the legislation in the form of amendments to the legislation that are adopted by a committee or a house of the legislature or a substitute version of such legislation that is adopted by a committee and preparation of the fiscal note on the prior version of the legislation shall stop, unless the legislator requesting the fiscal note specifies otherwise or the altered version is first adopted or enacted in the last week of a legislative session.

Fiscal notes shall be completed within one week of the request unless a longer time period is allowed by the requesting legislator. In the event a fiscal note has not been completed within one week of a request, a daily report shall be prepared for the requesting legislator by the director of financial management which report summarizes the progress in preparing the fiscal note. If the request is referred to the director of commerce, the daily report shall also include the date and time such referral was made. [2011 c 140 § 2; 2000 c 182 § 2; 1995 c 399 § 79; 1984 c 125 § 16; 1979 c 151 § 149; 1977 ex.s. c 19 § 2.]

Intent—2000 c 182: "It is the intent of the legislature to enhance the local government fiscal note process by providing for updated fiscal information on pending legislation and to establish a process for a more comprehensive report on the fiscal impacts to local governments arising from laws that have been enacted. Further, it is the intent of the legislature that the varying effects of legislation on different local governments be recognized. This act is enacted in recognition of the responsibilities imposed by RCW 43.135.060." [2000 c 182 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 43.135 RCW

STATE EXPENDITURES LIMITATIONS

Sections

43.135.035 Repealed.

43.135.045 Education construction fund—Appropriation conditions.

43.135.035 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.135.045 Education construction fund—Appropriation conditions. The education construction fund is hereby created in the state treasury.

(1) Funds may be appropriated from the education construction fund exclusively for common school construction or higher education construction. During the 2007-2009 fiscal biennium, funds may also be used for higher education facilities preservation and maintenance. During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may transfer from the education construction fund to the state general fund such amounts as reflect the excess fund balance of the fund.

(2) Funds may be appropriated for any other purpose only if approved by a two-thirds vote of each house of the legislature and if approved by a vote of the people at the next general election. An appropriation approved by the people under this subsection shall result in an adjustment to the state expenditure limit only for the fiscal period for which the appropriation is made and shall not affect any subsequent fiscal period.

(3) Funds for the student achievement program in RCW 28A.505.210 and 28A.505.220 shall be appropriated to the superintendent of public instruction strictly for distribution to school districts to meet the provisions set out in the student achievement act. Allocations shall be made on an equal per full-time equivalent student basis to each school district.

(4) After July 1, 2010, the state treasurer shall transfer one hundred two million dollars from the general fund to the education construction fund by June 30th of each year. [2011 1st sp.s. c 50 § 950; 2010 1st sp.s. c 27 § 5. Prior: 2009 c 564 § 939; 2009 c 479 § 37; prior: 2007 c 520 § 6035; 2007 c 484 § 5; prior: 2005 c 518 § 931; (2005 c 488 § 920 expired June

30, 2007); 2005 c 314 § 401; 2005 c 72 § 6; 2003 1st sp.s. c 25 § 920; prior: (2003 1st sp.s. c 26 § 919 expired June 30, 2005); (2003 1st sp.s. c 26 § 918 expired June 30, 2005); (2002 c 33 § 2 expired June 30, 2003); prior: 2001 c 3 § 9 (Initiative Measure No. 728, approved November 7, 2000); 2000 2nd sp.s. c 5 § 1; 2000 2nd sp.s. c 2 § 3; 1994 c 2 § 3 (Initiative Measure No. 601, approved November 2, 1993).]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Findings—Intent—2010 1st sp.s. c 27: See note following RCW 28B.76.526.

Effective date—2009 c 564: See note following RCW 2.68.020.

Effective date—2009 c 479: See note following RCW 2.56.030.

Part headings not law—Severability—Effective dates—2007 c 520: See notes following RCW 43.19.125.

Contingent effective date—2007 c 484 §§ 2-8: See note following RCW 43.79.495.

Effective date—2005 c 518 § 931: "Section 931 (RCW 43.135.045) of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2005." [2005 c 518 § 1808.]

Severability—2005 c 518: See note following RCW 28A.500.030.

Expiration date—2005 c 488 §§ 920 and 921: "Sections 920 and 921 of this act expire June 30, 2007." [2005 c 488 § 955.]

Part headings not law—Severability—Effective dates—2005 c 488: See notes following RCW 28B.50.360.

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.68.035.

Findings—Effective dates—2005 c 72: See notes following RCW 43.135.010.

Expiration date—2003 1st sp.s. c 26: "Sections 918 through 921, 926, and 929 of this act expire June 30, 2005." [2003 1st sp.s. c 26 § 927.]

Severability—2003 1st sp.s. c 26: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 26 § 930.]

Effective dates—2003 1st sp.s. c 26: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2003], except for section 919 of this act which takes effect June 30, 2003." [2003 1st sp.s. c 26 § 931.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Expiration date—2002 c 33: "This act expires June 30, 2003." [2002 c 33 § 3.]

Effective date—2002 c 33: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 13, 2002]." [2002 c 33 § 4.]

Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728): See notes following RCW 28A.505.210.

Additional notes found at www.leg.wa.gov

Chapter 43.136 RCW

TERMINATION OF TAX PREFERENCES

Sections

- 43.136.011 Findings—Intent.
- 43.136.045 Schedule for review of tax preferences—Expedited review—Citizen input.
- 43.136.055 Review of tax preferences by joint legislative audit and review committee—Recommendations.

43.136.011 Findings—Intent. The legislature recognizes that tax preferences are enacted to meet objectives which are determined to be in the public interest. However, some tax preferences may not be efficient or equitable tools for the achievement of current public policy objectives. Given the changing nature of the economy and tax structures of other states, the legislature finds that periodic performance audits of tax preferences are needed to determine if their continued existence will serve the public interest. The legislature further finds that tax preferences that are enacted for economic development purposes must demonstrate growth in full-time family wage jobs with health and retirement benefits. Given that an opportunity cost exists with each economic choice, it is the intent of the legislature that the overall impact of economic development-focused tax preferences benefit the state's economy. [2011 c 335 § 1; 2006 c 197 § 1.]

43.136.045 Schedule for review of tax preferences—Expedited review—Citizen input. (1) The citizen commission for performance measurement of tax preferences must develop a schedule to accomplish an orderly review of tax preferences at least once every ten years. In determining the schedule, the commission must consider the order the tax preferences were enacted into law, in addition to other factors including but not limited to grouping preferences for review by type of industry, economic sector, or policy area. The commission may elect to include, anywhere in the schedule, a tax preference that has a statutory expiration date. The commission must omit from the schedule tax preferences that are required by constitutional law, sales and use tax exemptions for machinery and equipment for manufacturing, research and development, or testing, the small business credit for the business and occupation tax, sales and use tax exemptions for food and prescription drugs, property tax relief for retired persons, and property tax valuations based on current use, and may omit any tax preference that the commission determines is a critical part of the structure of the tax system. As an alternative to the process under RCW 43.136.055, the commission may recommend to the joint legislative audit and review committee an expedited review process for any tax preference.

(2) The commission must revise the schedule as needed each year, taking into account newly enacted or terminated tax preferences. The commission must deliver the schedule to the joint legislative audit and review committee by September 1st of each year.

(3) The commission must provide a process for effective citizen input during its deliberations. [2011 c 335 § 2; 2006 c 197 § 4.]

43.136.055 Review of tax preferences by joint legislative audit and review committee—Recommendations. (1) The joint legislative audit and review committee must review tax preferences according to the schedule developed under RCW 43.136.045. The committee must consider, but not be limited to, the following factors in the review as relevant to each particular tax preference:

(a) The classes of individuals, types of organizations, or types of industries whose state tax liabilities are directly affected by the tax preference;

(b) Public policy objectives that might provide a justification for the tax preference, including but not limited to the legislative history, any legislative intent, or the extent to which the tax preference encourages business growth or relocation into this state, promotes growth or retention of high wage jobs, or helps stabilize communities;

(c) Evidence that the existence of the tax preference has contributed to the achievement of any of the public policy objectives;

(d) The extent to which continuation of the tax preference might contribute to any of the public policy objectives;

(e) The extent to which the tax preference may provide unintended benefits to an individual, organization, or industry other than those the legislature intended;

(f) The extent to which terminating the tax preference may have negative effects on the category of taxpayers that currently benefit from the tax preference, and the extent to which resulting higher taxes may have negative effects on employment and the economy;

(g) The feasibility of modifying the tax preference to provide for adjustment or recapture of the tax benefits of the tax preference if the objectives are not fulfilled;

(h) Fiscal impacts of the tax preference, including past impacts and expected future impacts if it is continued. For the purposes of this subsection, "fiscal impact" includes an analysis of the general effects of the tax preference on the overall state economy, including, but not limited to, the effects of the tax preference on the consumption and expenditures of persons and businesses within the state;

(i) The extent to which termination of the tax preference would affect the distribution of liability for payment of state taxes;

(j) The economic impact of the tax preference compared to the economic impact of government activities funded by the tax for which the tax preference is taken at the same level of expenditure as the tax preference. For purposes of this subsection the economic impact shall be determined using the Washington input-output model as published by the office of financial management;

(k) Consideration of similar tax preferences adopted in other states, and potential public policy benefits that might be gained by incorporating corresponding provisions in Washington.

(2) For each tax preference, the committee must provide a recommendation as to whether the tax preference should be continued without modification, modified, scheduled for sunset review at a future date, or terminated immediately. The committee may recommend accountability standards for the future review of a tax preference. [2011 c 335 § 3; 2006 c 197 § 5.]

Chapter 43.155 RCW

PUBLIC WORKS PROJECTS

Sections

- 43.155.050 Public works assistance account.
- 43.155.130 Intent—Local infrastructure assistance—Plan.
- 43.155.140 Projects in areas impacted by the closure or potential closure of large coal-fired electric generation facilities.

43.155.050 Public works assistance account. The public works assistance account is hereby established in the state treasury. Money may be placed in the public works assistance account from the proceeds of bonds when authorized by the legislature or from any other lawful source. Money in the public works assistance account shall be used to make loans and to give financial guarantees to local governments for public works projects. Moneys in the account may also be appropriated to provide for state match requirements under federal law for projects and activities conducted and financed by the board under the drinking water assistance account. Not more than fifteen percent of the biennial capital budget appropriation to the public works board from this account may be expended or obligated for preconstruction loans, emergency loans, or loans for capital facility planning under this chapter; of this amount, not more than ten percent of the biennial capital budget appropriation may be expended for emergency loans and not more than one percent of the biennial capital budget appropriation may be expended for capital facility planning loans. For the 2007-2009 biennium, moneys in the account may be used for grants for projects identified in section 138, chapter 488, Laws of 2005 and section 1033, chapter 520, Laws of 2007. During the 2009-2011 fiscal biennium, sums in the public works assistance account may be used for the water pollution control revolving fund program match in section 3013, chapter 36, Laws of 2010 1st sp. sess. During the 2009-2011 fiscal biennium, the legislature may transfer from the job development fund to the general fund such amounts as reflect the excess fund balance of the fund. During the 2011-2013 fiscal biennium, the legislature may transfer from the public works assistance account to the general fund, the water pollution control revolving account, and the drinking water assistance account such amounts as reflect the excess fund balance of the account. [2011 1st sp.s. c 50 § 951. Prior: 2010 1st sp.s. c 37 § 932; 2010 1st sp.s. c 36 § 6007; (2009 c 564 § 940 expired June 30, 2011); (2008 c 328 § 6002 expired June 30, 2011); 2007 c 520 § 6037; (2007 c 520 § 6036 expired June 30, 2011); prior: 2005 c 488 § 925; (2005 c 425 § 4 expired June 30, 2011); 2001 c 131 § 2; prior: 1995 2nd sp.s. c 18 § 918; 1995 c 376 § 11; 1993 sp.s. c 24 § 921; 1985 c 471 § 8.]

Effective date—2011 1st sp.s. c 50 § 951: "Section 951 of this act takes effect June 30, 2011." [2011 1st sp.s. c 50 § 952.]

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2010 1st sp.s. c 36: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 4, 2010]." [2010 1st sp.s. c 36 § 6018.]

Expiration date—2009 c 564 § 940: "Section 940 of this act expires June 30, 2011." [2009 c 564 § 962.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Expiration date—2008 c 328 § 6002: "Section 6002 of this act expires June 30, 2011." [2008 c 328 § 6018.]

Part headings not law—2008 c 328: "Part headings in this act are not any part of the law." [2008 c 328 § 6020.]

Severability—2008 c 328: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 328 § 6021.]

Effective date—2008 c 328: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [April 1, 2008]." [2008 c 328 § 6022.]

Expiration date—2007 c 520 § 6036: "Section 6036 of this act expires June 30, 2011." [2007 c 520 § 6039.]

Part headings not law—Severability—Effective dates—2007 c 520: See notes following RCW 43.19.125.

Part headings not law—Severability—Effective dates—2005 c 488: See notes following RCW 28B.50.360.

Finding—2005 c 425: "The legislature has and continues to recognize the vital importance of economic development to the health and prosperity of Washington state as indicated in RCW 43.160.010, 43.155.070(4)(g), 43.163.005, and 43.168.010. The legislature finds that current economic development programs and funding, which are primarily low-interest loan programs, can be enhanced by creating a grant program to assist with public infrastructure projects that directly stimulate community and economic development by supporting the creation of new jobs or the retention of existing jobs." [2005 c 425 § 1.]

Expiration date—2005 c 425: "This act expires June 30, 2011." [2005 c 425 § 6.]

Severability—2005 c 425: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 425 § 7.]

Findings—1995 c 376: See note following RCW 70.116.060.

Additional notes found at www.leg.wa.gov

43.155.130 Intent—Local infrastructure assistance—Plan. (1) The legislature intends to modernize state programs that provide financial and technical assistance related to local infrastructure by: (a) Clarifying the policy objectives and priorities for state assistance for local infrastructure; (b) eliminating redundancy among the various state programs; (c) increasing the speed of delivering state assistance and the ability to respond to emerging needs; (d) maximizing the acquisition and use of federal funding sources; (e) ensuring transparency in state and federal assistance; (f) improving access to the lowest cost private market financing; and (g) ensuring accountability and the periodic review of progress.

(2) By November 1, 2011, the public works board must prepare and submit to the appropriate committees of the legislature an implementation plan for creating a reformed state system for providing local infrastructure assistance. In developing the plan, the board must consult with state agencies that provide infrastructure funding and technical assistance including, but not limited to, the departments of commerce, health, and ecology. The board must also work in cooperation with local governments or entities that benefit from infrastructure funding and technical assistance.

(3) The board, state agencies, and local partners must consider, among other things, consolidation of state appropriations to support policy-focused investments including water quality, safe drinking water, storm water, economic development, access to private financing, solid waste and recycling, and flood levees. In addition, they must consider consolidating assistance packages, streamlining application processes, and clarify the respective responsibilities of state and local agencies in planning for, developing[,] and maintaining local public infrastructure.

(4) The implementation plan must include draft legislation and the organizational and budgetary changes necessary to implement the new system in time for the 2013-2015 budget cycle. [2011 1st sp.s. c 48 § 7028.]

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

43.155.140 Projects in areas impacted by the closure or potential closure of large coal-fired electric generation facilities. The board shall solicit qualifying projects to plan, design, and construct public works projects needed to attract new industrial and commercial activities in areas impacted by the closure or potential closure of large coal-fired electric generation facilities, which for the purposes of this section means a facility that emitted more than one million tons of greenhouse gases in any calendar year prior to 2008. The projects should be consistent with any applicable plans for major industrial activity on lands formerly used or designated for surface coal mining and supporting uses under RCW 36.70A.368. When the board receives timely and eligible project applications from a political subdivision of the state for financial assistance for such projects, the board from available funds shall give priority consideration to such projects. [2011 c 180 § 302.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

Chapter 43.160 RCW

ECONOMIC DEVELOPMENT— PUBLIC FACILITIES LOANS AND GRANTS

Sections

- 43.160.030 Community economic revitalization board—Members—Terms—Chair, vice chair—Management services—Travel expenses—Vacancies—Removal.
- 43.160.076 Financial assistance in rural counties—Areas impacted by the closure or potential closure of large coal-fired electric generation facilities.

43.160.030 Community economic revitalization board—Members—Terms—Chair, vice chair—Management services—Travel expenses—Vacancies—Removal.

(1) The community economic revitalization board is hereby created to exercise the powers granted under this chapter.

(2) The board shall consist of one member from each of the two major caucuses of the house of representatives to be appointed by the speaker of the house and one member from each of the two major caucuses of the senate to be appointed by the president of the senate. The board shall also consist of the following members appointed by the director of commerce: A recognized private or public sector economist; one port district official; one county official; one city official; one representative of a federally recognized Indian tribe; one representative of the public; one representative of small businesses each from: (a) The area west of Puget Sound, (b) the area east of Puget Sound and west of the Cascade range, (c) the area east of the Cascade range and west of the Columbia river, and (d) the area east of the Columbia river; one executive from large businesses each from the area west of the Cascades and the area east of the Cascades. The appointive members shall initially be appointed to terms as follows: Three members for one-year terms, three members for two-year terms, and three members for three-year terms which shall include the chair. Thereafter each succeeding term shall be for three years. The chair of the board shall be selected by the director of commerce. The members of the board shall

elect one of their members to serve as vice-chair. The director of commerce, the director of revenue, the commissioner of employment security, and the secretary of transportation shall serve as nonvoting advisory members of the board.

(3) Management services, including fiscal and contract services, shall be provided by the department to assist the board in implementing this chapter.

(4) Members of the board shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) If a vacancy occurs by death, resignation, or otherwise of appointive members of the board, the director of commerce shall fill the same for the unexpired term. Members of the board may be removed for malfeasance or misfeasance in office, upon specific written charges by the director of commerce, under chapter 34.05 RCW.

(6) A member appointed by the director of commerce may not be absent from more than fifty percent of the regularly scheduled meetings in any one calendar year. Any member who exceeds this absence limitation is deemed to have withdrawn from the office and may be replaced by the director of commerce.

(7) A majority of members currently appointed constitutes a quorum. [2011 1st sp.s. c 21 § 25; 2008 c 327 § 3; 2004 c 252 § 2; 2003 c 151 § 1; 1996 c 51 § 3; 1995 c 399 § 86; 1993 c 320 § 2. Prior: 1987 c 422 § 2; 1987 c 195 § 11; prior: 1985 c 446 § 2; 1985 c 6 § 13; prior: 1985 c 446 § 1; 1984 c 287 § 89; 1983 1st ex.s. c 60 § 2; 1982 1st ex.s. c 40 § 3.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Effective date—2008 c 327 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2008]." [2008 c 327 § 19.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

43.160.076 Financial assistance in rural counties—Areas impacted by the closure or potential closure of large coal-fired electric generation facilities. (1) Except as authorized to the contrary under subsection (2) of this section, from all funds available to the board for financial assistance in a biennium under this chapter, the board shall approve at least seventy-five percent of the first twenty million dollars of funds available and at least fifty percent of any additional funds for financial assistance for projects in rural counties.

(2) If at any time during the last six months of a biennium the board finds that the actual and anticipated applications for qualified projects in rural counties are clearly insufficient to use up the allocations under subsection (1) of this section, then the board shall estimate the amount of the insufficiency and during the remainder of the biennium may use that amount of the allocation for financial assistance to projects not located in rural counties.

(3) The board shall solicit qualifying projects to plan, design, and construct public facilities needed to attract new industrial and commercial activities in areas impacted by the closure or potential closure of large coal-fired electric generation facilities, which for the purposes of this section means a

facility that emitted more than one million tons of greenhouse gases in any calendar year prior to 2008. The projects should be consistent with any applicable plans for major industrial activity on lands formerly used or designated for surface coal mining and supporting uses under RCW 36.70A.368. When the board receives timely and eligible project applications from a political subdivision of the state for financial assistance for such projects, the board from available funds shall give priority consideration to such projects. [2011 c 180 § 301; 2008 c 327 § 8. Prior: 1999 c 164 § 105; prior: 1998 c 321 § 28 (Referendum Bill No. 49, approved November 3, 1998); 1998 c 55 § 4; 1997 c 367 § 9; 1996 c 51 § 7; 1995 c 226 § 15; 1993 c 320 § 5; 1991 c 314 § 24; 1985 c 446 § 6.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

Effective date—2008 c 327 §§ 1, 2, 4-11, 17: See note following RCW 43.160.010.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

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

Additional notes found at www.leg.wa.gov

Chapter 43.162 RCW

ECONOMIC DEVELOPMENT COMMISSION

Sections

- 43.162.005 Findings—Intent.
- 43.162.010 Washington state economic development commission—Membership—Policies and procedures.
- 43.162.012 "Commission" defined.
- 43.162.015 Executive director.
- 43.162.020 Duties—Biennial comprehensive statewide economic development strategy—Report—Biennial budget request—Memorandum of understanding—Performance evaluation—Gifts, grants, donations.
- 43.162.025 Additional authority.
- 43.162.030 Authority of governor and department of commerce not affected.
- 43.162.040 Washington state economic development commission account.

43.162.005 Findings—Intent. (1) The legislature finds that in order to achieve long-term global competitiveness, prosperity, and economic opportunity for all the state's citizens, Washington state must become the most attractive, creative, and fertile investment environment for innovation in the world.

(2) The legislature finds that the state must take a strategic approach to fostering an innovation economy, and that success will be driven by public and private sector leaders who are committed to developing and advocating a shared vision and collaborating across organizational and geographic boundaries. The legislature therefore intends to create an economic development commission that will provide planning, coordination, evaluation, monitoring, and policy analysis and development for the state economic development system as a whole, and advice to the governor and legislature concerning the state economic development system. [2011 c 311 § 1; 2007 c 232 § 1; 2003 c 235 § 1.]

43.162.010 Washington state economic development commission—Membership—Policies and procedures. (1) The Washington state economic development commission is established to assist the governor and legislature by providing leadership, direction, and guidance on a long-term and systematic approach to economic development that will result in enduring global competitiveness, prosperity, and economic opportunity for all the state's citizens.

(2)(a) The commission consists of twenty-four members. Fifteen of the members must be voting members appointed by the governor as follows: Eight representatives of the private sector, one representative of labor from east of the crest of the Cascade mountains and one representative of labor from west of the crest of the Cascade mountains, one representative of port districts, one representative of four-year state public higher education, one representative of state community or technical colleges, one representative with expertise in international trade, and one representative of associate development organizations. The director of the department of commerce, the director of the workforce training and education coordinating board, the commissioner of the employment security department, the secretary of the department of transportation, the director of the department of agriculture, and the chairs and ranking minority members of the standing committees of the house of representatives and the senate overseeing economic development policies must serve as nonvoting ex officio members.

(b) Members may not designate alternates, substitutes, or surrogates. However, members may participate in a meeting by conference telephone or similar communications equipment so that all persons participating in the meeting can hear each other at the same time. Participation by that method constitutes presence in person at a meeting.

(c) The chair of the commission must be a private sector voting member selected by the governor with the consent of the senate, and shall serve at the pleasure of the governor. A vice chair must be elected by members of the commission but may not be the director of an executive branch agency or a member of the legislature. The vice chair must exercise the duties of the commission chair in his or her absence.

(d) In making the appointments, the governor must consult with the commission and with organizations that have an interest in economic development, including, but not limited to, industry associations, labor organizations, minority business associations, economic development councils, chambers of commerce, port associations, tribes, and the chairs of the legislative committees with jurisdiction over economic development.

(e) The members must be representative of the geographic regions of the state, including eastern and central Washington, as well as represent the ethnic diversity of the state. Private sector members must represent existing and emerging industries, small businesses, women-owned businesses, and minority-owned businesses. Members of the commission must serve statewide interests while preserving their diverse perspectives, and must be recognized leaders in their fields with demonstrated experience in economic development, innovation, or disciplines related to economic development.

(3) Members appointed by the governor serve at the pleasure of the governor for not more than two consecutive

three-year terms, except that, as determined by the governor, the terms of four of the appointees on the commission on July 22, 2011, expire in 2012, the terms of four of the appointees on the commission on July 22, 2011, expire in 2013, and the terms of three of the appointees on the commission on July 22, 2011, expire in 2014. Thereafter all terms are for three years. Vacancies must be filled in the same manner as the original appointments.

(4) The commission may establish committees as it desires, and may invite nonmembers of the commission to serve as committee members.

(5) The executive director of the commission must be appointed by the governor with the consent of the commission. The salary of the executive director must be set by the governor with the consent of the commission. The governor may dismiss the executive director only with the approval of a majority vote of the commission. The commission, by a majority vote, may dismiss the executive director with the approval of the governor. The commission must evaluate the performance of the executive director in a manner consistent with the process used by the governor to evaluate the performance of agency directors.

(6) The commission may adopt policies and procedures for its own governance. [2011 c 311 § 2; 2007 c 232 § 2; 2003 c 235 § 2.]

43.162.012 "Commission" defined. For the purposes of this chapter, unless the context clearly requires otherwise, "commission" means the Washington state economic development commission created under *RCW 43.162.005. [2011 c 311 § 3.]

***Reviser's note:** The Washington state economic development commission is created in RCW 43.162.010.

43.162.015 Executive director. (1) The executive director of the commission must serve as its chief executive officer. Subject to available resources and in accordance with commission direction, the executive director must:

(a) Administer the provisions of this chapter, employ such personnel as may be necessary to implement the purposes of this chapter, utilize staff of existing operating agencies to the fullest extent possible, and employ outside consulting and service agencies when appropriate;

(b) Appoint necessary staff who are exempt from the provisions of chapter 41.06 RCW. The executive director's appointees serve at the executive director's pleasure on such terms and conditions as the executive director determines but subject to chapter 42.52 RCW.

The executive director shall, subject to the availability of funds for this purpose, implement a hiring process for a research manager responsible for managing the data collection, database, and evaluation functions under RCW 43.162.020 and 43.162.025. By October 1, 2011, the executive director must make a recommendation to the commission on a qualified candidate to fill the research manager position. The commission is responsible for making the final decision on hiring the research manager;

(c) Appoint employees who are subject to the provisions of chapter 41.06 RCW; and

(d) Contract with additional persons who have specific technical expertise if needed to carry out a specific, time-limited project.

(2) The executive director must exercise additional authority, other than rule making, as may be delegated by the commission.

(3) The executive director must develop for commission review and approval an annual commission budget and work plan in accordance with the omnibus appropriations bill approved by the legislature, and must present a fiscal report to the commission quarterly for its review and comment.

(4) The executive director of the commission must report solely to the governor and the commissioners on matters pertaining to commission operations. [2011 c 311 § 4; 2007 c 232 § 3.]

43.162.020 Duties—Biennial comprehensive statewide economic development strategy—Report—Biennial budget request—Memorandum of understanding—Performance evaluation—Gifts, grants, donations. (1) The commission must concentrate its major efforts on strategic planning, policy research and analysis, advocacy, evaluation, and promoting coordination and collaboration.

(2) During each regular legislative session, the commission must consult with appropriate legislative committees about the state's economic development needs and opportunities.

(3)(a) By October 1st of each even-numbered year, the commission must submit to the governor and legislature a biennial comprehensive statewide economic development strategy with a report on progress from the previous comprehensive strategy.

(b) The comprehensive statewide economic development strategy must include the industry clusters in the state and the strategic clusters targeted by the commission for economic development efforts. The commission must consult with the workforce training and education coordinating board and include labor market and economic information by the employment security department in developing the list of clusters and strategic clusters that meet the criteria identified by the working group convened by the economic development commission and the workforce training and education coordinating board under chapter 43.330 RCW.

(4)(a) In developing the comprehensive statewide economic development strategy, the commission must use, but may not be limited to: Economic, labor market, and populations trend reports in office of financial management forecasts; the annual state economic climate report prepared by the economic climate council; joint office of financial management and employment security department labor force, industry employment, and occupational forecasts; the results of scientifically based outcome evaluations; the needs of industry associations, industry clusters, businesses, and employees as evidenced in formal surveys and other input.

(b) The comprehensive statewide economic development strategy may include:

(i) An assessment of the state's economic vitality;

(ii) Recommended goals, objectives, and priorities for the next biennium, and the future;

(iii) A common set of outcomes and benchmarks for the economic development system as a whole;

(iv) Recommendations for removing barriers and promoting collaboration among participants in the innovation ecosystem;

(v) An inventory of existing relevant programs compiled by the commission from materials submitted by agencies;

(vi) Recommendations for expanding, discontinuing, or redirecting existing programs, or adding new programs; and

(vii) Recommendations of best practices and public and private sector roles in implementing the comprehensive statewide economic development strategy.

(5) In developing the biennial statewide economic development strategy, plans, inventories, assessments, and policy research, the commission must consult, collaborate, and coordinate with relevant state agencies, private sector businesses, nonprofit organizations involved in economic development, trade associations, and relevant local organizations in order to avoid duplication of effort.

(6) State agencies must cooperate with the commission and provide information as the commission may reasonably request.

(7) The commission must develop a biennial budget request for approval by the office of financial management. The commission must adopt an annual budget and work plan in accordance with the omnibus appropriations bill approved by the legislature.

(8)(a) The commission and its fiscal agent must jointly develop and adopt a memorandum of understanding to outline and establish clear lines of authority and responsibility between them related to budget and administrative services.

(b) The memorandum of understanding may not provide any additional grant of authorities to the commission or the fiscal agent that is not already provided for by statute, nor diminish any authorities or powers granted to either party by statute.

(c) Periodically, but not less often than biennially, the commission and fiscal agent must review the memorandum of understanding and, if necessary, recommend changes to the other party.

(d) As provided generally under RCW 43.162.015, the executive director of the commission must report solely to the governor and the commissioners on matters pertaining to commission operations.

(9) To maintain its objectivity and concentration on strategic planning, policy research and analysis, and evaluation, the commission may not take an administrative role in the delivery of services. However, subject to available resources and consistent with its work plan, the commission or the executive director may conduct outreach activities such as regional forums and best practices seminars.

(10) The commission must evaluate its own performance on a regular basis.

(11) The commission may accept gifts, grants, donations, sponsorships, or contributions from any federal, state, or local governmental agency or program, or any private source, and expend the same for any purpose consistent with this chapter. [2011 c 311 § 5; 2009 c 151 § 9; 2007 c 232 § 4; 2003 c 235 § 3.]

43.162.025 Additional authority. (1) Subject to available funds, the Washington state economic development commission may:

(a) Periodically review for consistency with the state comprehensive plan for economic development the policies and plans established for:

(i) Business and technical assistance by the small business development center, the Washington manufacturing service, the Washington technology center, associate development organizations, the department of commerce, and the office of minority and women-owned business enterprises;

(ii) Export assistance by the small business export finance assistance center, the international marketing program for agricultural commodities and trade, the department of agriculture, the center for international trade in forest products, associate development organizations, and the department of commerce; and

(iii) Infrastructure development by the department of commerce and the department of transportation; and

(b) Review and make recommendations to the office of financial management and the legislature on budget requests and legislative proposals relating to the state economic development system for purposes of consistency with the state comprehensive plan for economic development.

(2) The Washington state economic development commission must:

(a) In collaboration with the department of commerce and other partners, develop a plan for a consistent and reliable database on participation rates, costs, program activities, and outcomes from publicly funded economic development programs in this state by October 1, 2012;

(b) By October 1, 2012, establish standards for data collection and maintenance for providers in the economic development system in a format that is accessible to use by the commission. The commission must require a minimum of common core data to be collected by each entity providing economic development services with public funds and shall develop requirements for minimum common core data in consultation with the economic climate council, the office of financial management, and the providers of economic development services;

(c) Establish minimum common standards and metrics for program evaluation of economic development programs, and monitor such program evaluations; and

(d) Beginning no later than January 1, 2012, periodically administer, based on a schedule established by the commission, scientifically based outcome evaluations of the state economic development system including, but not limited to, surveys of industry associations, industry cluster associations, and businesses served by publicly funded economic development programs; matches with employment security department payroll and wage files; and matches with department of revenue tax files; and

(e) Evaluate proposals for expenditure from the economic development strategic reserve account and recommend expenditures from the account.

(3) The governor or legislature may direct the commission, from time to time, to undertake additional research and policy analysis, assessments, or other special projects related to its mission. [2011 c 311 § 6; 2007 c 232 § 5.]

43.162.030 Authority of governor and department of commerce not affected. Creation of the commission may not be construed to modify any authority or budgetary

responsibility of the governor or the department of commerce. [2011 c 311 § 7; 2007 c 232 § 7; 2003 c 235 § 4.]

43.162.040 Washington state economic development commission account. (1) The Washington state economic development commission account is created in the state treasury. All receipts from gifts, grants, donations, sponsorships, or contributions under RCW 43.162.020 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the Washington state economic development commission only for purposes related to carrying out the mission, roles, and responsibilities of the commission.

(2) Whenever any money, from the federal government or from other sources, that was not anticipated in the budget approved by the legislature, has actually been received and is designated to be spent for a specific purpose, the executive director must use the unanticipated receipts process as provided in RCW 43.79.270 to request authority to spend the money. [2011 c 311 § 8.]

Chapter 43.163 RCW

ECONOMIC DEVELOPMENT FINANCE AUTHORITY

Sections

43.163.130 Nonrecourse revenue bonds—Issuance.

43.163.130 Nonrecourse revenue bonds—Issuance.

(1) The authority may issue its nonrecourse revenue bonds in order to obtain the funds to carry out the programs authorized in this chapter. The bonds must be special obligations of the authority, payable solely out of the special fund or funds established by the authority for their repayment.

(2) Any bonds issued under this chapter may be secured by a financing document between the authority and the purchasers or owners of such bonds or between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state.

(a) The financing document may pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof.

(b) The financing document may contain such provisions for protecting and enforcing the rights, security, and remedies of bondowners as may be reasonable and proper, including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event of default which may include the acceleration of maturities, restrictions on the individual rights of action by bondowners, and covenants setting forth duties of and limitations on the authority in conduct of its programs and the management of its property.

(c) In addition to other security provided in this chapter or otherwise by law, bonds issued by the authority may be secured, in whole or in part, by financial guaranties, by insurance or by letters of credit issued to the authority or a trustee or any other person, by any bank, trust company, insurance or surety company or other financial institution, within or with-

out the state. The authority may pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof, as security for such guaranties or insurance or for the reimbursement by the authority to any issuer of such letter of credit of any payments made under such letter of credit.

(3) Without limiting the powers of the authority contained in this chapter, in connection with each issue of its obligation bonds, the authority must create and establish one or more special funds, including, but not limited to debt service and sinking funds, reserve funds, project funds, and such other special funds as the authority deems necessary, useful, or convenient.

(4) Any security interest created against the unexpended bond proceeds and against the special funds created by the authority is immediately valid and binding against the money and any securities in which the money may be invested without authority or trustee possession. The security interest must be prior to any party having any competing claim against the moneys or securities, without filing or recording under Article 9A of the Uniform Commercial Code, Title 62A RCW, and regardless of whether the party has notice of the security interest.

(5) The bonds may be issued as serial bonds, term bonds or any other type of bond instrument consistent with the provisions of this chapter. The bonds shall bear such date or dates; mature at such time or times; bear interest at such rate or rates, either fixed or variable; be payable at such time or times; be in such denominations; be in such form; bear such privileges of transferability, exchangeability, and interchangeability; be subject to such terms of redemption; and be sold at public or private sale, in such manner, at such time or times, and at such price or prices as the authority determines. The bonds must be executed by the manual or facsimile signatures of the authority's chair and either its secretary or executive director, and may be authenticated by the trustee (if the authority determines to use a trustee) or any registrar which may be designated for the bonds by the authority.

(6) Bonds may be issued by the authority to refund other outstanding authority bonds, at or prior to maturity of, and to pay any redemption premium on, the outstanding bonds. Bonds issued for refunding purposes may be combined with bonds issued for the financing or refinancing of new projects. Pending the application of the proceeds of the refunding bonds to the redemption of the bonds to be redeemed, the authority may enter into an agreement or agreements with a corporate trustee regarding the interim investment of the proceeds and the application of the proceeds and the earnings on the proceeds to the payment of the principal of and interest on, and the redemption of, the bonds to be redeemed.

(7) The bonds of the authority may be negotiable instruments under Title 62A RCW.

(8) Neither the members of the authority, nor its employees or agents, nor any person executing the bonds is personally liable on the bonds or be subject to any personal liability or accountability by reason of the issuance of the bonds.

(9) The authority may purchase its bonds with any of its funds available for the purchase. The authority may hold, pledge, cancel or resell the bonds subject to and in accordance with agreements with bondowners.

(10) The authority may not exceed one billion five hundred million dollars in total outstanding debt at any time.

(11) The state finance committee must be notified in advance of the issuance of bonds by the authority in order to promote the orderly offering of obligations in the financial markets. [2011 c 176 § 1; 2005 c 137 § 1. Prior: 2001 c 304 § 2; 2001 c 32 § 2; 1998 c 48 § 1; 1994 c 238 § 5; 1989 c 279 § 14.]

Effective date—2001 c 304: See note following RCW 43.163.090.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

Bonds to finance conservation measures: RCW 43.19.695.

Additional notes found at www.leg.wa.gov

Chapter 43.167 RCW

COMMUNITY PRESERVATION AND DEVELOPMENT AUTHORITIES

Sections

43.167.020 Powers of authorities—Limitations. (*Effective January 1, 2012.*)

43.167.020 Powers of authorities—Limitations. (*Effective January 1, 2012.*)

(1) A community preservation and development authority shall have the power to:

(a) Accept gifts, grants, loans, or other aid from public or private entities;

(b) Employ and appoint such agents, attorneys, officers, and employees as may be necessary to implement the purposes and duties of an authority;

(c) Contract and enter into partnerships with individuals, associations, corporations, and local, state, and federal governments;

(d) Buy, own, lease, and sell real and personal property;

(e) Hold in trust, improve, and develop land;

(f) Invest, deposit, and reinvest its funds;

(g) Incur debt in furtherance of its mission; and

(h) Lend its funds, property, credit, or services for corporate purposes.

(2) A community preservation and development authority has no power of eminent domain nor any power to levy taxes or special assessments.

(3) A community preservation and development authority that accepts public funds under subsection (1)(a) of this section:

(a) Is subject in all respects to Article VIII, section 5 or 7, as appropriate, of the state Constitution, and to RCW 42.17A.550; and

(b) May not use the funds to support or oppose a candidate, ballot proposition, political party, or political committee. [2011 c 60 § 40; 2009 c 516 § 2; 2007 c 501 § 4.]

Effective date—2011 c 60: See RCW 42.17A.919.

Chapter 43.185 RCW

HOUSING ASSISTANCE PROGRAM

Sections

43.185.050 Use of moneys for loans and grant projects to provide housing—Eligible activities.

43.185.050 Use of moneys for loans and grant projects to provide housing—Eligible activities. (1) The department shall use moneys from the housing trust fund and other legislative appropriations to finance in whole or in part any loans or grant projects that will provide housing for persons and families with special housing needs and with incomes at or below fifty percent of the median family income for the county or standard metropolitan statistical area where the project is located. At least thirty percent of these moneys used in any given funding cycle shall be for the benefit of projects located in rural areas of the state as defined by the department. If the department determines that it has not received an adequate number of suitable applications for rural projects during any given funding cycle, the department may allocate unused moneys for projects in nonrural areas of the state.

(2) Activities eligible for assistance from the housing trust fund and other legislative appropriations include, but are not limited to:

(a) New construction, rehabilitation, or acquisition of low and very low-income housing units;

(b) Rent subsidies;

(c) Matching funds for social services directly related to providing housing for special-need tenants in assisted projects;

(d) Technical assistance, design and finance services and consultation, and administrative costs for eligible nonprofit community or neighborhood-based organizations;

(e) Administrative costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's access to housing funds other than those available under this chapter;

(f) Shelters and related services for the homeless, including emergency shelters and overnight youth shelters;

(g) Mortgage subsidies, including temporary rental and mortgage payment subsidies to prevent homelessness;

(h) Mortgage insurance guarantee or payments for eligible projects;

(i) Down payment or closing cost assistance for eligible first-time home buyers;

(j) Acquisition of housing units for the purpose of preservation as low-income or very low-income housing;

(k) Projects making housing more accessible to families with members who have disabilities; and

(l) During the 2005-2007 fiscal biennium, a manufactured/mobile home landlord-tenant ombudsman conflict resolution and park registration program.

(3) During the 2005-2007 fiscal biennium, revenues generated under RCW 36.22.178 may be used for the development of affordable housing projects and other activities funded in section 108, chapter 371, Laws of 2006.

(4) Legislative appropriations from capital bond proceeds may be used only for the costs of projects authorized under subsection (2)(a), (i), and (j) of this section, and not for the administrative costs of the department.

(5) Moneys from repayment of loans from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the housing assistance program except for activities authorized under subsection (2)(b) and (c) of this section.

(6) Administrative costs of the department shall not exceed five percent of the annual funds available for the housing assistance program, except during the 2011-2013 fiscal biennium when administrative costs associated with housing trust fund application, distribution, and project development activities may not exceed three percent of the annual funds available for the housing assistance program; administrative costs associated with compliance and monitoring activities of the department may not exceed one quarter of one percent annually of the contracted amount of state investment in the housing assistance program; and reappropriations may not be included in the calculation of the annual funds available for determining the administrative costs. [2011 1st sp.s. c 50 § 953; 2006 c 371 § 236. Prior: 2005 c 518 § 1801; 2005 c 219 § 1; 2002 c 294 § 6; 1994 c 160 § 1; 1991 c 356 § 4; 1986 c 298 § 6.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Part headings not law—Severability—Effective date—2006 c 371: See notes following RCW 43.325.040.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Findings—2002 c 294: See note following RCW 36.22.178.

Chapter 43.185A RCW

AFFORDABLE HOUSING PROGRAM

Sections

43.185A.030 Activities eligible for assistance.

43.185A.030 Activities eligible for assistance. (1) Using moneys specifically appropriated for such purpose, the department shall finance in whole or in part projects that will provide housing for low-income households.

(2) Activities eligible for assistance include, but are not limited to:

(a) New construction, rehabilitation, or acquisition of housing for low-income households;

(b) Rent subsidies in new construction or rehabilitated multifamily units;

(c) Down payment or closing costs assistance for first-time home buyers;

(d) Mortgage subsidies for new construction or rehabilitation of eligible multifamily units; and

(e) Mortgage insurance guarantee or payments for eligible projects.

(3) Legislative appropriations from capital bond proceeds may be used only for the costs of projects authorized under subsection (2) (a), (c), (d), and (e) of this section, and not for the administrative costs of the department.

(4) Moneys from repayment of loans from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the affordable housing program except for activities authorized under subsection (2)(b) of this section.

(5) Administrative costs of the department shall not exceed four percent of the annual funds available for the affordable housing program, except during the 2011-2013 fiscal biennium when administrative costs associated with housing trust fund application, distribution, and project development activities may not exceed three percent of the

annual funds available for the housing assistance program; administrative costs associated with compliance and monitoring activities of the department may not exceed one quarter of one percent annually of the contracted amount of state investment in the housing assistance program; and reappropriations may not be included in the calculation of the annual funds available for determining the administrative costs. [2011 1st sp.s. c 50 § 954. Prior: 2005 c 518 § 1803; 2005 c 219 § 3; 1994 c 160 § 3; 1991 c 356 § 12.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Chapter 43.185C RCW

HOMELESS HOUSING AND ASSISTANCE

Sections

- 43.185C.180 Washington homeless client management information system.
- 43.185C.190 Affordable housing for all account.
- 43.185C.210 Transitional housing operating and rent program.
- 43.185C.220 Essential needs and housing support program—Distribution of funds.
- 43.185C.230 Verification of eligibility—Medical care services.

43.185C.180 Washington homeless client management information system. (1) In order to improve services for the homeless, the department, within amounts appropriated by the legislature for this specific purpose, shall implement the Washington homeless client management information system for the ongoing collection and updates of information about all homeless individuals in the state.

(2) Information about homeless individuals for the Washington homeless client management information system shall come from the Washington homeless census and from state agencies and community organizations providing services to homeless individuals and families.

(a) Personally identifying information about homeless individuals for the Washington homeless client management information system may only be collected after having obtained informed, reasonably time limited (i) written consent from the homeless individual to whom the information relates, or (ii) telephonic consent from the homeless individual, provided that written consent is obtained at the first time the individual is physically present at an organization with access to the Washington homeless client management information system. Safeguards consistent with federal requirements on data collection must be in place to protect homeless individuals' rights regarding their personally identifying information.

(b) Data collection under this subsection shall be done in a manner consistent with federally informed consent guidelines regarding human research which, at a minimum, require that individuals receive:

(i) Information about the expected duration of their participation in the Washington homeless client management information system;

(ii) An explanation of whom to contact for answers to pertinent questions about the data collection and their rights regarding their personal identifying information;

(iii) An explanation regarding whom to contact in the event of injury to the individual related to the Washington homeless client management information system;

(iv) A description of any reasonably foreseeable risks to the homeless individual; and

(v) A statement describing the extent to which confidentiality of records identifying the individual will be maintained.

(c) The department must adopt policies governing the appropriate process for destroying Washington homeless client management information system paper documents containing personally identifying information when the paper documents are no longer needed. The policies must not conflict with any federal data requirements.

(3) The Washington homeless client management information system shall serve as an online information and referral system to enable local governments and providers to connect homeless persons in the database with available housing and other support services. Local governments shall develop a capacity for continuous case management, including independent living plans, when appropriate, to assist homeless persons.

(4) The information in the Washington homeless client management information system will also provide the department with the information to consolidate and analyze data about the extent and nature of homelessness in Washington state, giving emphasis to information about the extent and nature of homelessness in Washington state among families with children.

(5) The system may be merged with other data gathering and reporting systems and shall:

(a) Protect the right of privacy of individuals;

(b) Provide for consultation and collaboration with all relevant state agencies including the department of social and health services, experts, and community organizations involved in the delivery of services to homeless persons; and

(c) Include related information held or gathered by other state agencies.

(6) Within amounts appropriated by the legislature, for this specific purpose, the department shall evaluate the information gathered and disseminate the analysis and the evaluation broadly, using appropriate computer networks as well as written reports.

(7) The Washington homeless client management information system shall be implemented by December 31, 2009, and updated with new homeless client information at least annually. [2011 c 239 § 1; 2006 c 349 § 8; 1999 c 267 § 4. Formerly RCW 43.63A.655.]

Finding—2006 c 349: See note following RCW 43.185.130.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

43.185C.190 Affordable housing for all account. The affordable housing for all account is created in the state treasury, subject to appropriation. The state's portion of the surcharges established in RCW 36.22.178 shall be deposited in the account. Expenditures from the account may only be used for affordable housing programs. During the 2011-2013 fiscal biennium, moneys in the account may be transferred to the home security fund. [2011 1st sp.s. c 50 § 955; 2007 c 427 § 2.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

43.185C.210 Transitional housing operating and rent program. (1) The transitional housing operating and rent program is created in the department to assist individuals and families who are homeless or who are at risk of becoming homeless to secure and retain safe, decent, and affordable housing. The department shall provide grants to eligible organizations, as described in RCW 43.185.060, to provide assistance to program participants. The eligible organizations must use grant moneys for:

(a) Rental assistance, which includes security or utility deposits, first and last month's rent assistance, and eligible moving expenses to be determined by the department;

(b) Case management services designed to assist program participants to secure and retain immediate housing and to transition into permanent housing and greater levels of self-sufficiency;

(c) Operating expenses of transitional housing facilities that serve homeless families with children; and

(d) Administrative costs of the eligible organization, which must not exceed limits prescribed by the department.

(2) Eligible to receive assistance through the transitional housing operating and rent program are:

(a) Families with children who are homeless or who are at risk of becoming homeless and who have household incomes at or below fifty percent of the median household income for their county;

(b) Families with children who are homeless or who are at risk of becoming homeless and who are receiving services under chapter 13.34 RCW;

(c) Individuals or families without children who are homeless or at risk of becoming homeless and who have household incomes at or below thirty percent of the median household income for their county;

(d) Individuals or families who are homeless or who are at risk of becoming homeless and who have a household with an adult member who has a mental health or chemical dependency disorder; and

(e) Individuals or families who are homeless or who are at risk of becoming homeless and who have a household with an adult member who is an offender released from confinement within the past eighteen months.

(3) All program participants must be willing to create and actively participate in a housing stability plan for achieving permanent housing and greater levels of self-sufficiency.

(4) Data on all program participants must be entered into and tracked through the Washington homeless client management information system as described in RCW 43.185C.180. For eligible organizations serving victims of domestic violence or sexual assault, compliance with this subsection must be accomplished in accordance with 42 U.S.C. Sec. 11383(a)(8).

(5)(a) Except as provided in (b) of this subsection, beginning in 2011, each eligible organization receiving over five hundred thousand dollars during the previous calendar year from the transitional housing operating and rent program and from sources including: (i) State housing-related funding sources; (ii) the affordable housing for all surcharge in RCW 36.22.178; (iii) the home security fund surcharges in RCW

36.22.179 and 36.22.1791; and (iv) any other surcharge imposed under chapter 36.22 or 43.185C RCW to fund homelessness programs or other housing programs, shall apply to the Washington state quality award program for an independent assessment of its quality management, accountability, and performance system, once every three years.

(b) Cities and counties are exempt from the provisions of (a) of this subsection until 2018.

(6) The department may develop rules, requirements, procedures, and guidelines as necessary to implement and operate the transitional housing operating and rent program.

(7) The department shall produce an annual transitional housing operating and rent program report that must be included in the department's homeless housing strategic plan as described in RCW 43.185C.040. The report must include performance measures to be determined by the department that address, at a minimum, the following issue areas:

(a) The success of the program in helping program participants transition into permanent affordable housing and achieve self-sufficiency or increase their levels of self-sufficiency, which shall be defined by the department based upon the costs of living, including housing costs, needed to support: (i) One adult individual; and (ii) two adult individuals and one preschool-aged child and one school-aged child;

(b) The financial performance of the program related to efficient program administration by the department and program operation by selected eligible organizations, including an analysis of the costs per program participant served;

(c) The quality, completeness, and timeliness of the information on program participants provided to the Washington homeless client management information system database; and

(d) The satisfaction of program participants in the assistance provided through the program. [2011 c 353 § 6; 2008 c 256 § 1.]

Intent—2011 c 353: See note following RCW 36.70A.130.

43.185C.220 Essential needs and housing support program—Distribution of funds. (1) The department shall distribute funds for the essential needs and housing support program established under this section in a manner consistent with the requirements of this section and the biennial operating budget. The first distribution of funds must be completed by September 1, 2011. Essential needs or housing support is only for persons found eligible for such services under RCW 74.62.030(4) and is not considered an entitlement.

(2) The department shall distribute funds appropriated for the essential needs and housing support program in the form of grants to designated essential needs support and housing support entities within each county. The department shall not distribute any funds until it approves the expenditure plan submitted by the designated essential needs support and housing support entities. The amount of funds to be distributed pursuant to this section shall be designated in the biennial operating budget. For the sole purpose of meeting the initial distribution of funds date, the department may distribute partial funds upon the department's approval of a preliminary expenditure plan. The department shall not distribute the remaining funds until it has approved a final expenditure plan.

(3)(a) During the 2011-2013 biennium, in awarding housing support that is not funded through the contingency fund in this subsection, the designated housing support entity shall provide housing support to clients who are homeless persons as defined in RCW 43.185C.010. As provided in the biennial operating budget for the 2011-2013 biennium, a contingency fund shall be used solely for those clients who are at substantial risk of losing stable housing or at substantial risk of losing one of the other services defined in RCW 74.62.010(6). For purposes of this chapter, "substantial risk" means the client has provided documentation that he or she will lose his or her housing within the next thirty days or that the services will be discontinued within the next thirty days.

(b) After July 1, 2013, the designated housing support entity shall give first priority to clients who are homeless persons as defined in RCW 43.185C.010 and second priority to clients who would be at substantial risk of losing stable housing without housing support.

(4) For each county, the department shall designate an essential needs support entity and a housing support entity that will begin providing these supports to medical care services program recipients on November 1, 2011. Essential needs and housing support entities are not required to provide assistance to every medical care services recipient that is referred to the local entity or who meets the priority standards in subsection (3) of this section.

(a) Each designated entity must be a local government or community-based organization, and may administer the funding for essential needs support, housing support, or both. Designated entities have the authority to subcontract with qualified entities. Upon request, and the approval of the department, two or more counties may combine resources to more effectively deliver services.

(b) The department's designation process must include a review of proficiency in managing housing or human services programs when designating housing support entities.

(c) Within a county, if the department directly awards separate grants to the designated housing support entity and the designated essential needs support entity, the department shall determine the amount allocated for essential needs support as directed in the biennial operating budget.

(5)(a) Essential needs and housing support entities must use funds distributed under this section as flexibly as is practicable to provide essential needs items and housing support to recipients of the essential needs and housing support program, subject to the requirements of this section.

(b) Benefits provided under the essential needs and housing support program shall not be provided to recipients in the form of cash assistance.

(c) The appropriations by the legislature for the purposes of the essential needs and housing support program established under this section shall be based on forecasted program caseloads. The caseload forecast council shall provide a courtesy forecast of the medical care services recipient population that is homeless or is included in reporting under subsection (7)(c)(iii) of this section. The department may move funds between entities or between counties to reflect actual caseload changes. In doing so, the department must: (i) Develop a process for reviewing the caseload of designated essential needs and housing support entities, and for redistributing grant funds from those entities experiencing reduced

actual caseloads to those with increased actual caseloads; and (ii) inform all designated entities of the redistribution process. Savings resulting from program caseload attrition from the essential needs and housing support program shall not result in increased per-client expenditures.

(d) Essential needs and housing support entities must partner with other public and private organizations to maximize the beneficial impact of funds distributed under this section, and should attempt to leverage other sources of public and private funds to serve essential needs and housing support recipients. Funds appropriated in the operating budget for essential needs and housing support must be used only to serve persons eligible to receive services under that program.

(6) The department shall use no more than five percent of the funds for administration of the essential needs and housing support program. Each essential needs and housing support entity shall use no more than seven percent of the funds for administrative expenses.

(7) The department shall:

(a) Require housing support entities to enter data into the homeless client management information system;

(b) Require essential needs support entities to report on services provided under this section;

(c) In collaboration with the department of social and health services, submit a report annually to the relevant policy and fiscal committees of the legislature. A preliminary report shall be submitted by December 31, 2011, and must include (c)(i), (iii), and (v) of this subsection. Annual reports must be submitted beginning December 1, 2012, and must include:

(i) A description of the actions the department has taken to achieve the objectives of chapter 36, Laws of 2011 1st sp. sess.;

(ii) The amount of funds used by the department to administer the program;

(iii) Information on the housing status of essential needs and housing support recipients served by housing support entities, and individuals who have requested housing support but did not receive housing support;

(iv) Grantee expenditure data related to administration and services provided under this section; and

(v) Efforts made to partner with other entities and leverage sources or public and private funds;

(d) Review the data submitted by the designated entities, and make recommendations for program improvements and administrative efficiencies. The department has the authority to designate alternative entities as necessary due to performance or other significant issues. Such change must only be made after consultation with the department of social and health services and the impacted entity.

(8) The department, counties, and essential needs and housing support entities are not civilly or criminally liable and may not have any penalty or cause of action of any nature arise against them related to decisions regarding: (a) The provision or lack of provision of housing or essential needs support; or (b) the type of housing arrangement supported with funds allocated under this section, when the decision was made in good faith and in the performance of the powers and duties under this section. However, this section does not prohibit legal actions against the department, county, or

essential needs or housing support entity to enforce contractual duties or obligations. [2011 1st sp.s. c 36 § 4.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

43.185C.230 Verification of eligibility—Medical care services. The department, in collaboration with the department of social and health services, shall develop a mechanism through which the department and local governments or community-based organizations can verify a person has been determined eligible and remains eligible for medical care services under RCW 74.09.035 by the department of social and health services. [2011 1st sp.s. c 36 § 5.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Chapter 43.215 RCW

DEPARTMENT OF EARLY LEARNING

Sections

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43.215.371	Reporting resignation or termination of individual working in child care agency.
43.215.560	Subsidized child care report and assessment.

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

(1) "Agency" means any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child’s own home and includes the following irrespective of whether there is compensation to the agency:

(a) "Child day care center" means an agency that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours;

(b) "Early learning" includes but is not limited to programs and services for child care; state, federal, private, and nonprofit preschool; child care subsidies; child care resource and referral; parental education and support; and training and professional development for early learning professionals;

(c) "Family day care provider" means a child day care provider who regularly provides child day care and early learning services for not more than twelve children in the provider’s home in the family living quarters;

(d) "Nongovernmental private-public partnership" means an entity registered as a nonprofit corporation in Washington state with a primary focus on early learning, school readiness, and parental support, and an ability to raise a minimum of five million dollars in contributions;

(e) "Service provider" means the entity that operates a community facility.

(2) "Agency" does not include the following:

(a) Persons related to the child in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child’s parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; or

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated;

(b) Persons who are legal guardians of the child;

(c) Persons who care for a neighbor’s or friend’s child or children, with or without compensation, where the person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care;

(d) Parents on a mutually cooperative basis exchange care of one another’s children;

(e) Nursery schools or kindergartens that are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, that are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children, and do not accept custody of children;

(g) Seasonal camps of three months’ or less duration engaged primarily in recreational or educational activities;

(h) Facilities providing child care for periods of less than twenty-four hours when a parent or legal guardian of the child remains on the premises of the facility for the purpose of participating in:

(i) Activities other than employment; or

(ii) Employment of up to two hours per day when the facility is operated by a nonprofit entity that also operates a licensed child care program at the same facility in another location or at another facility;

(i) Any agency having been in operation in this state ten years before June 8, 1967, and not seeking or accepting monies or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(j) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(k) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(l) An agency that offers early learning and support services, such as parent education, and does not provide child care services on a regular basis.

(3) "Applicant" means a person who requests or seeks employment in an agency.

(4) "Conviction information" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the applicant.

(5) "Department" means the department of early learning.

(6) "Director" means the director of the department.

(7) "Employer" means a person or business that engages the services of one or more people, especially for wages or salary to work in an agency.

(8) "Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.215.300(1) or assessment of civil monetary penalties pursuant to RCW 43.215.300(3).

(9) "Negative action" means a court order, court judgment, or an adverse action taken by an agency, in any state, federal, tribal, or foreign jurisdiction, which results in a finding against the applicant reasonably related to the individual's character, suitability, and competence to care for or have unsupervised access to children in child care. This may include, but is not limited to:

(a) A decision issued by an administrative law judge;

(b) A final determination, decision, or finding made by an agency following an investigation;

(c) An adverse agency action, including termination, revocation, or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification, or contract in lieu of the adverse action;

(d) A revocation, denial, or restriction placed on any professional license; or

(e) A final decision of a disciplinary board.

(10) "Nonconviction information" means arrest, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the applicant.

(11) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(12) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency. [2011 c 295 § 3; 2011 c 78 § 1. Prior: 2007 c 415 § 2; 2007 c 394 § 2; 2006 c 265 § 102.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2011 c 78 § 1 and by 2011 c 295 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Captions not law—2007 c 415: See note following RCW 43.215.005.

Finding—Declaration—2007 c 394: "The legislature finds that education is the single most effective investment that can be made in children, the

state, the economy, and the future. A well-educated citizenry is essential both for the preservation of democracy and for enhancing the state's ability to compete in the knowledge-based global economy.

As recommended by Washington learns, the legislature declares that the overarching goal for education in the state is to have a world-class, learner-focused, seamless education system that educates more Washingtonians to the highest levels of educational attainment." [2007 c 394 § 1.]

Captions not law—2007 c 394: "Captions used in this act are not any part of the law." [2007 c 394 § 8.]

43.215.090 Early learning advisory council—State-wide early learning plan.

(1) The early learning advisory council is established to advise the department on statewide early learning issues that would build a comprehensive system of quality early learning programs and services for Washington's children and families by assessing needs and the availability of services, aligning resources, developing plans for data collection and professional development of early childhood educators, and establishing key performance measures.

(2) The council shall work in conjunction with the department to develop a statewide early learning plan that guides the department in promoting alignment of private and public sector actions, objectives, and resources, and ensuring school readiness.

(3) The council shall include diverse, statewide representation from public, nonprofit, and for-profit entities. Its membership shall reflect regional, racial, and cultural diversity to adequately represent the needs of all children and families in the state.

(4) Councilmembers shall serve two-year terms. However, to stagger the terms of the council, the initial appointments for twelve of the members shall be for one year. Once the initial one-year to two-year terms expire, all subsequent terms shall be for two years, with the terms expiring on June 30th of the applicable year. The terms shall be staggered in such a way that, where possible, the terms of members representing a specific group do not expire simultaneously.

(5) The council shall consist of not more than twenty-three members, as follows:

(a) The governor shall appoint at least one representative from each of the following: The department, the office of financial management, the department of social and health services, the department of health, the higher education coordinating board, and the state board for community and technical colleges;

(b) One representative from the office of the superintendent of public instruction, to be appointed by the superintendent of public instruction;

(c) The governor shall appoint seven leaders in early childhood education, with at least one representative with experience or expertise in one or more of the areas such as the following: The K-12 system, family day care providers, and child care centers with four of the seven governor's appointees made as follows:

(i) The head start state collaboration office director or the director's designee;

(ii) A representative of a head start, early head start, migrant/seasonal head start, or tribal head start program;

(iii) A representative of a local education agency; and

(iv) A representative of the state agency responsible for programs under section 619 or part C of the federal individuals with disabilities education act;

(d) Two members of the house of representatives, one from each caucus, and two members of the senate, one from each caucus, to be appointed by the speaker of the house of representatives and the president of the senate, respectively;

(e) Two parents, one of whom serves on the department's parent advisory group, to be appointed by the governor;

(f) One representative of the private-public partnership created in RCW 43.215.070, to be appointed by the partnership board;

(g) One representative designated by sovereign tribal governments; and

(h) One representative from the Washington federation of independent schools.

(6) The council shall be cochaired by one representative of a state agency and one nongovernmental member, to be elected by the council for two-year terms.

(7) The council shall appoint two members and stakeholders with expertise in early learning to sit on the technical working group created in section 2, chapter 234, Laws of 2010.

(8) Each member of the board shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060.

(9) The department shall provide staff support to the council. [2011 c 177 § 2. Prior: 2010 c 234 § 3; 2010 c 12 § 1; 2007 c 394 § 3.]

Finding—Purpose—2011 c 177: "The legislature finds that to fully comply with requirements in section 642B of the federal head start act, 42 U.S.C. Sec. 9837b, regarding state advisory council membership, Washington must amend existing law to reflect necessary changes in early learning advisory council membership in accordance with the federal requirement.

Accordingly, the purpose of this act is to specify four of the governor's appointees as permanent members on the early learning advisory council to comply with state advisory council requirements as follows: The head start state collaboration office director or a designee; a representative of a head start, early head start, migrant/seasonal head start, or tribal head start program; a representative of a local education agency; and a representative of the state agency responsible for programs under section 619 or part C of the federal individuals with disabilities education act. This act also revises the categories of groups from which the governor may appoint additional representatives as members of the council." [2011 c 177 § 1.]

Intent—2010 c 234: "The department of early learning, the superintendent of public instruction, and thrive by five's joint early learning recommendations to the governor, and the quality education council's January 2010 recommendations to the legislature both suggested that a voluntary program of early learning should be included within the overall program of basic education. The legislature intends to examine these recommendations and Attorney General Opinion Number 8 (2009) through the development of a working group to identify and recommend a comprehensive plan." [2010 c 234 § 1.]

Finding—Declaration—Captions not law—2007 c 394: See notes following RCW 43.215.010.

43.215.135 Working connections child care program subsidy authorization. (1) The department shall establish and implement policies in the working connections child care program to promote stability and quality of care for children from low-income households. Policies for the expenditure of funds constituting the working connections child care program must be consistent with the outcome measures defined

in RCW 74.08A.410 and the standards established in this section intended to promote continuity of care for children.

(2) As a condition of receiving a child care subsidy or a working connections child care subsidy, the applicant or recipient must seek child support enforcement services from the department of social and health services, division of child support, unless the department finds that the applicant or recipient has good cause not to cooperate.

(3) Except as provided in subsection (4) of this section, an applicant or recipient of a child care subsidy or a working connections child care subsidy is eligible to receive that subsidy for six months before having to recertify his or her income eligibility. The six-month certification provision applies only if enrollments in the child care subsidy or working connections child care program are capped.

(4) Beginning in fiscal year 2011, for families with children enrolled in an early childhood education and assistance program, a head start program, or an early head start program, authorizations for the working connections child care subsidy shall be effective for twelve months unless a change in circumstances necessitates reauthorization sooner than twelve months.

(5) The department, in consultation with the department of social and health services, shall report to the legislature by September 1, 2011, with:

(a) An analysis of the impact of the twelve-month authorization period on the stability of child care, program costs, and administrative savings; and

(b) Recommendations for expanding the application of the twelve-month authorization period to additional populations of children in care. [2011 1st sp.s. c 42 § 11; 2010 c 273 § 2.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Intent—2010 c 273: "It is the intent of the legislature that this act be implemented within the funding appropriated in the 2009-11 biennial budget. No additional appropriations will be provided for its implementation." [2010 c 273 § 7.]

43.215.1351 Working connections child care program—Unemployment compensation. For the working connections child care program, the department shall not count the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1202 when determining a consumer's income eligibility and copayment. [2011 c 4 § 17.]

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

43.215.146 Home visitation programs—Definitions. The definitions in this section apply throughout this section and RCW 43.215.145, 43.215.147, and *43.121.185 unless the context clearly requires otherwise.

(1) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(2) "Home visitation" means providing services in the permanent or temporary residence, or in other familiar surroundings, of the family receiving such services.

(3) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices. [2011 1st sp.s. c 32 § 6; 2007 c 466 § 2. Formerly RCW 43.121.175.]

***Reviser's note:** RCW 43.121.185 was repealed by 2011 1st sp.s. c 32 § 12, effective June 30, 2012.

Transition plan—Report to the legislature—2011 1st sp.s. c 32: See note following RCW 70.305.005.

43.215.147 Home visitation programs—Funding—Home visitation services coordination or consolidation plan. (1) Within available funds, the department shall fund evidence-based and research-based home visitation programs for improving parenting skills and outcomes for children. Home visitation programs must be voluntary and must address the needs of families to alleviate the effect on child development of factors such as poverty, single parenthood, parental unemployment or underemployment, parental disability, or parental lack of high school diploma, which research shows are risk factors for child abuse and neglect and poor educational outcomes. In order to maximize opportunities to obtain matching funds from private entities, general funds intended to support home visiting funding shall be appropriated to the home visiting services account established in RCW 43.215.130.

(2) The department shall work with the department of social and health services, the department of health, the private-public partnership created in RCW 43.215.070, and key partners and stakeholders to develop a plan to coordinate or consolidate home visitation services for children and families to the extent practicable. [2011 1st sp.s. c 32 § 7; 2008 c 152 § 6; 2007 c 466 § 3. Formerly RCW 43.121.180.]

Transition plan—Report to the legislature—2011 1st sp.s. c 32: See note following RCW 70.305.005.

Findings—Intent—2008 c 152: See note following RCW 13.34.136.

43.215.200 Director's licensing duties. It shall be the director's duty with regard to licensing:

(1) In consultation and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of child care facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages and other characteristics of the children served, variations in the purposes and services offered or size or structure of the agencies to be licensed, or because of any other factor relevant thereto;

(2) In consultation with the state fire marshal's office, the director shall use an interagency process to address health and safety requirements for child care programs that serve school-age children and are operated in buildings that contain public or private schools that safely serve children during times in which school is in session;

(3) In consultation and with the advice and assistance of parents or guardians, and persons representative of the various type agencies to be licensed, to adopt and publish mini-

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num requirements for licensing applicable to each of the various categories of agencies to be licensed under this chapter;

(4) In consultation with law enforcement personnel, the director shall investigate the conviction record or pending charges of each agency and its staff seeking licensure or relicensure, and other persons having unsupervised access to children in care;

(5) To satisfy the shared background check requirements provided for in RCW 43.215.215 and 43.20A.710, the department of early learning and the department of social and health services shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow both departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. Neither department may share the federal background check results with any other state agency or person;

(6) To issue, revoke, or deny licenses to agencies pursuant to this chapter. Licenses shall specify the category of care that an agency is authorized to render and the ages and number of children to be served;

(7) To prescribe the procedures and the form and contents of reports necessary for the administration of this chapter and to require regular reports from each licensee;

(8) To inspect agencies periodically to determine whether or not there is compliance with this chapter and the requirements adopted under this chapter;

(9) To review requirements adopted under this chapter at least every two years and to adopt appropriate changes after consultation with affected groups for child day care requirements; and

(10) To consult with public and private agencies in order to help them improve their methods and facilities for the care and early learning of children. [2011 c 359 § 2; 2011 c 253 § 3; 2007 c 415 § 3; 2006 c 265 § 301.]

Reviser's note: This section was amended by 2011 c 253 § 3 and by 2011 c 359 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2011 c 359: "(1) The legislature finds that some licensed child care centers seeking to operate in public schools incur substantial costs to renovate spaces that are considered safe for children to use for the purpose of education. Consequently, families are forced to seek before or after school child care outside of the school building, resulting in additional transitions for students.

(2) It is the legislature's intent to allow licensed child care centers that serve school-age children to operate in facilities that provide a safe and healthy environment for children to use for the purpose of education. With respect to section 2(2) of this act, the legislature intends that the development of any related child care licensing requirements shall:

(a) Ensure safe and healthy environments for children;

(b) Utilize existing rule-making processes and resources;

(c) Utilize existing requirements as a starting point rather than create an entirely new set of requirements; and

(d) Give due consideration to the burdens imposed by inconsistent licensing requirements." [2011 c 359 § 1.]

Captions not law—2007 c 415: See note following RCW 43.215.005.

43.215.215 Character, suitability, and competence to provide child care and early learning services—Fingerprint criminal history record checks—Background check clearance card or certificate—Shared background checks. (1) In determining whether an individual is of appro-

priate character, suitability, and competence to provide child care and early learning services to children, the department may consider the history of past involvement of child protective services or law enforcement agencies with the individual for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of a child. No report of child abuse or neglect that has been destroyed or expunged under RCW 26.44.031 may be used for such purposes. No unfounded or inconclusive allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a provider licensed under this chapter.

(2) In order to determine the suitability of individuals newly applying for an agency license, new licensees, their new employees, and other persons who newly have unsupervised access to children in care, shall be fingerprinted.

(a) The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history record check.

(b)(i) Effective July 1, 2012, all individuals applying for first-time agency licenses, all new employees, and other persons who have not been previously qualified by the department to have unsupervised access to children in care must be fingerprinted and obtain a criminal history record check pursuant to this section.

(ii) Persons required to be fingerprinted and obtain a criminal [history] record check pursuant to this section must pay for the cost of this check as follows: The fee established by the Washington state patrol for the criminal background history check, including the cost of obtaining the fingerprints; and a fee paid to the department for the cost of administering the individual-based/portable background check clearance registry. The fee paid to the department must be deposited into the individual-based/portable background check clearance account established in RCW 43.215.218. The licensee may, but need not, pay these costs on behalf of a prospective employee or reimburse the prospective employee for these costs. The licensee and the prospective employee may share these costs.

(c) The director shall use the fingerprint criminal history record check information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children.

(d) Criminal justice agencies shall provide the director such information as they may have and that the director may require for such purpose.

(e) No later than July 1, 2013, all agency licensees holding licenses prior to July 1, 2012, persons who were employees before July 1, 2012, and persons who have been qualified by the department before July 1, 2012, to have unsupervised access to children in care, must submit a new background application to the department. The department must require persons submitting a new background application pursuant to this subsection (2)(e) to pay a fee to the department for the cost of administering the individual-based/portable background check clearance registry. This fee must be paid into the individual-based/portable background check clearance account established in RCW 43.215.218. The licensee may, but need not, pay these costs on behalf of a prospective employee or reimburse the prospective employee for these

costs. The licensee and the prospective employee may share these costs.

(f) The department shall issue a background check clearance card or certificate to the applicant if after the completion of a background check the department concludes the applicant is qualified for unsupervised access to children in care. The background check clearance card or certificate is valid for three years from the date of issuance. A valid card or certificate must be accepted by a potential employer as proof that the applicant has successfully completed a background check as required under this chapter.

(g) The original applicant for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care shall submit a new background check application to the department, on a form and by a date as determined by the department.

(h) The applicant and agency shall maintain on-site for inspection a copy of the background check clearance card or certificate.

(i) Individuals who have been issued a background check clearance card or certificate shall report nonconviction and conviction information to the department within twenty-four hours of the event constituting the nonconviction or conviction information.

(j) The department shall investigate and conduct a re-determination of an applicant's or licensee's background clearance if the department receives a complaint or information from individuals, a law enforcement agency, or other federal, state, or local government agency. Subject to the requirements contained in RCW 43.215.300 and 43.215.305 and based on a determination that an individual lacks the appropriate character, suitability, or competence to provide child care or early learning services to children, the department may: (i) Invalidate the background card or certificate; or (ii) suspend, modify, or revoke any license authorized by this chapter.

(3) To satisfy the shared background check requirements of the department of early learning and the department of social and health services, each department shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow both departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. Neither department may share the federal background check results with any other state agency or person. [2011 c 295 § 2; 2011 c 253 § 4; 2007 c 415 § 5.]

Reviser's note: This section was amended by 2011 c 253 § 4 and by 2011 c 295 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Captions not law—2007 c 415: See note following RCW 43.215.005.

43.215.216 Background check clearance registry—Background application form. Subject to appropriation, the department of early learning shall establish and maintain an individual-based or portable background check clearance registry by July 1, 2012. Any individual seeking a child care license or employment in any child care facility licensed or regulated under current law shall submit a background appli-

cation on a form prescribed by the department in rule. [2011 c 295 § 1.]

43.215.217 Fee for developing and administering individual-based/portable background check clearance registry. Effective July 1, 2011, all agency licensees shall pay the department a one-time fee established by the department. When establishing the fee, the department must consider the cost of developing and administering the registry, and shall not set a fee which is estimated to generate revenue beyond estimated costs for the development and administration of the registry. Fee revenues must be deposited in the individual-based/portable background check clearance account created in RCW 43.215.218 and may be expended only for the costs of developing and administering the individual-based/portable background check clearance registry created in RCW 43.215.216. [2011 c 295 § 4.]

43.215.218 Individual-based/portable background check clearance account. The individual-based/portable background check clearance account is created in the custody of the state treasurer. All fees collected pursuant to RCW 43.215.215 and 43.215.217 must be deposited in the account. Expenditures from the account may be made only for development and administration, and implementation of the individual-based/portable background check registry established in RCW 43.215.216. Only the director of the department of early learning or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2011 c 295 § 5.]

43.215.260 License application—Nonexpiring licenses—Issuance, renewal, duration. (1) Each agency shall make application for a license or the continuation of a full license to the department on forms prescribed by the department. Upon receipt of such application, the department shall either grant or deny a license or continuation of a full license within ninety days. A license or continuation shall be granted if the agency meets the minimum requirements set forth in this chapter and the departmental requirements consistent with this chapter, except that an initial license may be issued as provided in RCW 43.215.280. The department shall consider whether an agency is in good standing, as defined in subsection (4)(b) of this section, before granting a continuation of a full license. Full licenses provided for in this chapter shall continue to remain valid so long as the licensee meets the requirements for a nonexpiring license in subsection (2) of this section. The licensee, however, shall advise the director of any material change in circumstances which might constitute grounds for reclassification of license as to category. The license issued under this chapter is not transferable and applies only to the licensee and the location stated in the application. For licensed family day care homes having an acceptable history of child care, the license may remain in effect for two weeks after a move.

(2) In order to qualify for a nonexpiring full license, a licensee must meet the following requirements on an annual basis as established from the date of initial licensure:

- (a) Submit the annual licensing fee;
- (b) Submit a declaration to the department indicating the licensee's intent to continue operating a licensed child care program, or the intent to cease operation on a date certain;
- (c) Submit a declaration of compliance with all licensing rules; and
- (d) Submit background check applications on the schedule established by the department.

(3) If a licensee fails to meet the requirements in subsection (2) of this section for continuation of a full license the license expires and the licensee must submit a new application for licensure under this chapter.

(4)(a) Nothing about the nonexpiring license process may interfere with the department's established monitoring practice.

(b) For the purpose of this section, an agency is considered to be in good standing if in the intervening period between monitoring visits the agency does not have any of the following:

- (i) Valid complaints;
- (ii) A history of noncompliance related to those valid complaints or pending from prior monitoring visits; or
- (iii) Other information that when evaluated would result in a finding of noncompliance with this section.

(c) The department shall consider whether an agency is in good standing when determining the most appropriate approach and process for monitoring visits, for the purposes of administrative efficiency while protecting children, consistent with this chapter. If the department determines that an agency is not in good standing, the department may issue a probationary license, as provided in RCW 43.215.290. [2011 c 297 § 1; 2006 c 265 § 307.]

43.215.270 License renewal. (1) If a licensee desires to apply for a renewal of its license, a request for a renewal shall be filed ninety days before the expiration date of the license. If the department has failed to act at the time of the expiration date of the license, the license shall continue in effect until such time as the department acts.

(2) License renewal under this section does not apply to nonexpiring licenses described in RCW 43.215.260. [2011 c 297 § 3; 2006 c 265 § 308.]

43.215.290 Probationary licenses. (1) The department may issue a probationary license to a licensee who has had an initial, expiring, or other license but is temporarily unable to comply with a rule or has been the subject of multiple complaints or concerns about noncompliance if:

- (a) The noncompliance does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue; and
- (b) The licensee has a plan approved by the department to correct the area of noncompliance within the probationary period.

(2) Before issuing a probationary license, the department shall, in writing, refer the licensee to the child care resource and referral network or other appropriate resource for technical assistance. The department may issue a probationary license pursuant to subsection (1) of this section if within fifteen working days after the department has sent its referral:

(a) The licensee, in writing, has refused the department's referral for technical assistance; or

(b) The licensee has failed to respond in writing to the department's referral for technical assistance.

(3) If the licensee accepts the department's referral for technical assistance issued under subsection (2) of this section, the department, the licensee, and the technical assistance provider shall meet within thirty days after the licensee's acceptance. The licensee and the department, in consultation with the technical assistance provider, shall develop a plan to correct the areas of noncompliance identified by the department. If, after sixty days, the licensee has not corrected the areas of noncompliance identified in the plan developed in consultation with the technical assistance provider, the department may issue a probationary license pursuant to subsection (1) of this section.

(4) A probationary license may be issued for up to six months, and at the discretion of the department it may be extended for an additional six months. The department shall immediately terminate the probationary license, if at any time the noncompliance for which the probationary license was issued presents an immediate threat to the health or well-being of the children.

(5) The department may, at any time, issue a probationary license for due cause that states the conditions of probation.

(6) An existing license is invalidated when a probationary license is issued.

(7) At the expiration of the probationary license, the department shall reinstate the original license for the remainder of its term, issue a new license, or revoke the original license.

(8) A right to an adjudicative proceeding shall not accrue to the licensee whose license has been placed on probationary status unless the licensee does not agree with the placement on probationary status and the department then suspends, revokes, or modifies the license. [2011 c 297 § 2; 2006 c 265 § 310.]

43.215.300 Licenses—Denial, suspension, revocation, modification, nonrenewal—Proceedings—Penalties.

(1) An agency may be denied a license, or any license issued pursuant to this chapter may be suspended, revoked, modified, or not renewed by the director upon proof (a) that the agency has failed or refused to comply with the provisions of this chapter or the requirements adopted pursuant to this chapter; or (b) that the conditions required for the issuance of a license under this chapter have ceased to exist with respect to such licenses. RCW 43.215.305 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

(3)(a) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under this chapter or that an agency subject to licensing under this chapter is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home.

(b) Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance.

(c) Civil monetary penalties shall not exceed one hundred fifty dollars per violation for a family day care home and two hundred fifty dollars per violation for child day care centers. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.

(d) The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period.

(e) The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has assessed pursuant to this chapter within ten days after such assessment becomes final. RCW 43.215.307 governs notice of a civil monetary penalty and provides the right to an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties.

(4)(a) In addition to or in lieu of an enforcement action being taken, the department may place a child day care center or family day care provider on nonreferral status if the center or provider has failed or refused to comply with this chapter or rules adopted under this chapter or an enforcement action has been taken. The nonreferral status may continue until the department determines that: (i) No enforcement action is appropriate; or (ii) a corrective action plan has been successfully concluded.

(b) Whenever a child day care center or family day care provider is placed on nonreferral status, the department shall provide written notification to the child day care center or family day care provider.

(5) The department shall notify appropriate public and private child care resource and referral agencies of the department's decision to: (a) Take an enforcement action against a child day care center or family day care provider; or (b) place or remove a child day care center or family day care provider on nonreferral status. [2011 c 296 § 1; 2007 c 17 § 2; 2006 c 265 § 311.]

Short title—2011 c 296: "This act shall be known and cited as the Colby Thompson act." [2011 c 296 § 4.]

43.215.335 Unlicensed providers—Notification to agency—Penalty—Posting on web site.

When the department suspects that an agency is providing child care services without a license, it shall send notice to that agency within ten days. The notice shall include, but not be limited to, the following information:

- (1) That a license is required and the reasons why;
- (2) That the agency is suspected of providing child care without a license;
- (3) That the agency must immediately stop providing child care until the agency becomes licensed;
- (4) That the department can issue a penalty of one hundred fifty dollars per day for each day a family day care home

provided care without being licensed and two hundred fifty dollars for each day a child day care center provided care without being licensed;

(5) That if the agency does not initiate the licensing process within thirty days of the date of the notice, the department will post on its web site that the agency is providing child care without a license. [2011 c 296 § 3.]

Short title—2011 c 296: See note following RCW 43.215.300.

43.215.370 Reporting—Actions against agency licensees—Agencies notified of licensing requirement—Posting on web site. For the purposes of reporting actions taken against agency licensees, upon the development of an early learning information system, the following actions shall be posted to the department's web site accessible by the public: Suspension, surrender, revocation, denial, stayed suspension, or reinstatement of a license. The department shall also post on the web site those agencies subject to licensing that have not initiated the licensing process within thirty days of the department's notification as required in RCW 43.215.300. [2011 c 296 § 2; 2007 c 415 § 9.]

Short title—2011 c 296: See note following RCW 43.215.300.

Captions not law—2007 c 415: See note following RCW 43.215.005.

43.215.371 Reporting resignation or termination of individual working in child care agency. Upon resignation or termination with or without cause of any individual working in a child care agency, the child care agency shall report to the department within twenty-four hours if it has knowledge of the following with respect to the individual:

(1) Any charge or conviction for a crime listed in WAC 170-06-0120;

(2) Any other charge or conviction for a crime that could be reasonably related to the individual's suitability to provide care for or have unsupervised access to children or care; or

(3) Any negative action as defined in RCW 43.215.010. [2011 c 295 § 6.]

43.215.560 Subsidized child care report and assessment. The department and the department of social and health services, in consultation with interested individuals and organizations, shall jointly:

(1) Identify different options to track subsidized child care attendance, including methods using a land line or cellular telephone, a computer, a point of sale system, or some combination of these methods and report their recommended method to the legislature no later than December 31, 2011. Each department's recommendations must include implementation issues to be addressed and a proposed implementation timeline, and should assume a January 2013 implementation date for the attendance tracking system. The legislature shall review the recommendations and authorize implementation. The method that is chosen must interface smoothly with the current and future payment systems for subsidized child care payments.

(2) Conduct an assessment of the current subsidized child care eligibility determination system and develop recommendations to improve the accuracy, efficiency, and responsiveness of the system, including consideration of the most appropriate entity or entities to make eligibility determi-

nations. The results of the assessment shall be reported to the legislature no later than December 31, 2011. [2011 1st sp.s. c 42 § 12.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Chapter 43.220 RCW

WASHINGTON CONSERVATION CORPS

Sections

43.220.010	Repealed.
43.220.020	Conservation corps created—Puget Sound corps created.
43.220.030	Repealed.
43.220.040	Definitions.
43.220.045	Project goals—Recovery of Puget Sound ecosystem—Priorities.
43.220.060	Powers and duties—Partnering with other entities—Effect on employed workers—Use of facilities, supplies, instruments, and tools of supervising agency.
43.220.070	Corps membership—Eligibility—Coordination of recruitment activities—Enrollment period.
43.220.075	Annual meeting—Forum for partner agencies—Work plan.
43.220.080	Repealed.
43.220.090	Repealed.
43.220.120	Repealed.
43.220.130	Repealed.
43.220.160	Repealed.
43.220.170	Exemption from unemployment compensation coverage.
43.220.180	Repealed.
43.220.190	Repealed.
43.220.210	Repealed.
43.220.231	Limitation on use of funds.
43.220.250	Reimbursement of nonprofit corporations for certain services.
43.220.905	Intent—Application—2011 c 20.

43.220.010 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.220.020 Conservation corps created—Puget Sound corps created. (1) The Washington conservation corps is created. The department of ecology must administer the corps as a partnership with the departments of natural resources and fish and wildlife, the state parks and recreation commission, and when appropriate, other agencies and nonprofit organizations to advance the program goals outlined in RCW 43.220.045.

(2) The Puget Sound corps is created as a distinct program within the Washington conservation corps focused on the implementation of the specific program goals outlined in RCW 43.220.045. [2011 c 20 § 2; 1999 c 280 § 1; 1994 c 264 § 32; 1988 c 36 § 23; 1983 1st ex.s. c 40 § 1.]

Findings—Intent—2011 c 20: "(1) The legislature finds that the Washington conservation corps, the veterans conservation corps, and other state and nonprofit service corps contribute significantly to the priorities of state government to protect natural resources, including Puget Sound, while providing meaningful work experience for the state's youth, veterans, unemployed, and underemployed workforces.

(2) The legislature further finds that the long-term health of the economy of Washington depends on the sustainable management of its natural resources and that the livelihoods and revenues produced by Washington's forests, agricultural lands, estuaries, waterways, and watersheds would be enhanced by targeted, streamlined, and prioritized investments in clean water and habitat restoration.

(3) The legislature further finds that it is important to stretch limited public resources to advance the state's natural resource management priorities. Transformation of natural resource management and service delivery, including the creation of strategic partnerships among agencies and nongovernmental partners, will increase the efficiency and effectiveness of the expenditure of federal, state, and local funds for clean water and habitat reha-

bilitation projects.

(4) The legislature further finds that there are efficiencies to be gained by streamlining how the various conservation corps are administered, managed, funded, and deployed by the natural resources agencies. There are further efficiencies to be gained through coordinating the conservation corps with other state service corps programs, recruitment activities, and through public-private partnerships.

(5) The legislature further finds that the state should seek to expand the conservation corps in all areas of the state, deploying the corps to work on projects that advance established priorities including, but not limited to, the cleanup and rehabilitation of the Puget Sound ecosystem, oil spill response and cleanup, salmon recovery, and the reduction of wildfire and forest health hazards statewide.

(6) The legislature further finds that individuals with developmental disabilities would benefit from experiencing a meaningful work experience, and learning the value of labor and of membership in a productive society. As such, the legislature urges state agencies that are participating in the Washington conservation corps program to consider for enrollment in the program individuals with developmental disabilities, as defined in RCW 71A.10.020.

(7)(a) Therefore, it is the intent of the legislature to maintain the conservation corps statewide, to collaborate with the veterans conservation corps, to establish the Puget Sound corps, to streamline how government administers and manages the state's conservation corps to more efficiently expend the state's resources toward priority outcomes, including the recovery of the Puget Sound ecosystem to health by 2020, to increase opportunities for meaningful work experience, and to authorize public-private partnerships as a key element of corps activities.

(b) It is also the intent of the legislature to integrate into the Puget Sound corps the therapeutic and reintegration intent of the veterans conservation corps for veterans involved in the Puget Sound corps." [2011 c 20 § 1.]

43.220.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

(1) "Agency administrative costs" means indirect expenses such as personnel, payroll, contract administration, fiscal services, and other overhead costs.

(2) "Corps" means the Washington conservation corps, including the Puget Sound corps.

(3) "Corps member" means an individual enrolled in the Washington conservation corps.

(4) "Corps member leaders" or "specialists" means members of the corps who serve in leadership or training capacities or who provide specialized services other than or in addition to the types of work and services that are performed by the corps members in general.

(5) "Crew supervisor" means temporary, project, or permanent state employees who supervise corps members and coordinate work project design and completion.

(6) "Department" means the department of ecology.

(7) "Program support costs" include, but are not limited to, program planning, development of reports, job and career training, uniforms and equipment, and standard office space and utilities. Program support costs do not include direct scheduling and supervision of corps members.

(8) "Public lands" means any lands or waters, or interests therein, owned or administered by any agency or instrumentality of the state, federal, or local government. [2011 c 20 § 4. Prior: 1999 c 280 § 3; 1999 c 151 § 1301; 1987 c 367 § 2; 1983 1st ex.s. c 40 § 4.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2011 c 20: See note following RCW 43.220.020.

Additional notes found at www.leg.wa.gov

43.220.045 Project goals—Recovery of Puget Sound ecosystem—Priorities. (1) The corps shall be organized and managed to complete projects with fee-for-service work crews that meet goals associated with the protection, promotion, enhancement, or rehabilitation of the following:

- (a) Public lands;
- (b) State natural resources;
- (c) Water quality;
- (d) Watershed health;
- (e) Fish and wildlife;
- (f) Habitat;
- (g) Outdoor recreation;
- (h) Forest health;
- (i) Wildfire risk reduction; and
- (j) State historic sites.

(2) In addition to the project goals outlined in subsection (1) of this section, the Puget Sound corps shall seek to deploy corps members with the specific goal of participating in the recovery of the Puget Sound ecosystem. The resources of the Puget Sound corps must be prioritized, when practicable, to focus on the following when located within the Puget Sound basin:

- (a) Projects identified in, or consistent with, the action agenda developed by the Puget Sound partnership in chapter 90.71 RCW;
 - (b) Projects located on public lands;
 - (c) Habitat enhancement and rehabilitation projects; and
 - (d) Education and stewardship projects.
- (3) Both the corps and the Puget Sound corps shall give preference to projects that satisfy the goals identified in this section and that:
- (a) Will provide long-term benefits to the public;
 - (b) Will provide productive training and work experiences to the corps members involved;
 - (c) Expands or integrates training programs or career development opportunities for corps members;
 - (d) May result in payments to the state for services performed; and
 - (e) Can be promptly completed. [2011 c 20 § 5.]

Findings—Intent—2011 c 20: See note following RCW 43.220.020.

43.220.060 Powers and duties—Partnering with other entities—Effect on employed workers—Use of facilities, supplies, instruments, and tools of supervising agency. (1) The department shall have the following powers and duties as necessary to administer the Washington conservation corps:

(a) Recruiting and employing staff, corps members, corps member leaders, and specialists consistent with RCW 43.220.070;

(b) Serving as the corps' central application recipient for grants from federal service projects and service organizations;

(c) Executing agreements for furnishing the services of the corps to carry out conservation corps programs to any federal, state, or local public agency, any local organization as specified in this chapter that operates consistent with the overall objectives of the conservation corps;

(d) Applying for and accepting grants or contributions of funds from the federal government, other public sources, or private funding sources for conservation corps projects and, when possible, other projects specifically targeted at Puget Sound recovery that can be accomplished with fee-for-service labor from the Puget Sound corps. Application priority must be given to funding sources only available to state agencies;

(e) Establishing consistent work standards and placement and evaluation procedures of corps programs; and

(f) Selecting, reviewing, approving, and evaluating the success of corps projects.

(2) The department may partner with any other state agencies, local institutions, nonprofit organizations, or nonprofit service corps organizations in the administration of the corps. However, when partnering with the Washington department of veterans affairs, participation criteria and other administrative decisions affecting participants in the veterans conservation corps created under chapter 43.60A RCW are to be determined by the Washington department of veterans affairs. Other state agencies may maintain a coordinator for the purposes of partnering with the department and the corps.

(3) If deemed practicable, the department shall work with the state board for community and technical colleges created in RCW 28B.50.050 to align the conservation corps program with optional career pathways for participants that may provide instruction in basic skills in addition to the appropriate technical training.

(4) The assignment of corps members shall not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of nonovertime work, wages, or other employment benefits. Agencies that participate in the program may not terminate, lay-off, or reduce the working hours of any employee for the purpose of using a corps member with available funds. In circumstances where substantial efficiencies or a public purpose may result, participating agencies may use corps members to carry out essential agency work or contractual functions without displacing current employees.

(5) Facilities, supplies, motor vehicles, instruments, and tools of participating agencies shall be made available for use by the conservation corps to the extent that such use does not conflict with the normal duties of the agency. The agency may purchase, rent, or otherwise acquire other necessary tools, facilities, supplies, and instruments. [2011 c 20 § 6; 1999 c 280 § 4; 1987 c 505 § 44; 1983 1st ex.s. c 40 § 6.]

Findings—Intent—2011 c 20: See note following RCW 43.220.020.

43.220.070 Corps membership—Eligibility—Coordination of recruitment activities—Enrollment period.

(1)(a) Except as otherwise provided in this section, conservation corps members must be unemployed or underemployed residents of the state between eighteen and twenty-five years of age at the time of enrollment who are citizens or lawful permanent residents of the United States.

(b) The age requirements may be waived for corps leaders, veterans, specialists with special leadership or occupational skills, and participants with a sensory or mental handicap.

(2) The recruitment of conservation corps members is the primary responsibility of the department. However, to the degree practicable, recruitment activities must be coordinated with the following entities:

(a) The department of natural resources;

(b) The department of fish and wildlife;

(c) The state parks and recreation commission;

(d) The Washington department of veterans affairs;

(e) The employment security department;

(f) Community and technical colleges; and

(g) Any other interested postsecondary educational institutions.

(3) Recruitment efforts must be targeted to, but not limited to, residents of the state who meet the participation eligibility requirements provided in this section and are either:

(a) A student enrolled at a community or technical college, private career college, or a four-year college or university;

(b) A minority or disadvantaged youth residing in an urban or rural area of the state; or

(c) Military veterans.

(4) Corps members shall not be considered state employees. Other provisions of law relating to civil service, hours of work, rate of compensation, sick leave, unemployment compensation, state retirement plans, and vacation leave do not apply to the Washington conservation corps except for the crew supervisors, who shall be project employees, and the administrative and supervisory personnel.

(5) Except as otherwise provided in this section, participation as a corps member is for an initial period of three months. The enrollment period may be extended for additional three-month periods by mutual agreement of the department and the corps member, not to exceed two years.

(6)(a) Corps members are to be available at all times for emergency response services coordinated through the department or other public agency. Duties may include sandbagging and flood cleanup, oil spill response, wildfire suppression, search and rescue, and other functions in response to emergencies.

(b) Corps members may be assigned to longer-term specialized crews not subject to the temporal limitations of service otherwise imposed by this section when longer-term commitments satisfy the specialized needs of the department, an agency partner, or other service contractee. [2011 c 20 § 7; 1999 c 280 § 5; 1995 c 399 § 112; 1990 c 71 § 2; 1988 c 78 § 1; 1986 c 266 § 48. Prior: 1985 c 230 § 7; 1985 c 7 § 110; 1983 1st ex.s. c 40 § 7.]

Findings—Intent—2011 c 20: See note following RCW 43.220.020.

Legislative finding—1990 c 71: "The legislature finds that the Washington conservation corps has proven to be an effective method to provide meaningful work experience for many of the state's young persons. Because of recent, and possible future, increases in the minimum wage laws, it is necessary to make an adjustment in the limitation that applies to corps member reimbursements." [1990 c 71 § 1.]

Additional notes found at www.leg.wa.gov

43.220.075 Annual meeting—Forum for partner agencies—Work plan. (1) The director of the department of ecology and the commissioner of public lands shall jointly host an annual meeting with other corps program participants to serve as a forum for the partner agencies to provide guid-

ance and feedback concerning the management and function of the corps.

(2) At a minimum, representatives of the following must be invited to participate at the annual meeting: The department of fish and wildlife; the state parks and recreation commission; the Puget Sound partnership; the department of veterans affairs; the employment security department; the Washington commission for national and community service; conservation districts; the state conservation commission; the salmon recovery funding board; the recreation and conservation office; the department of commerce; the department of health; or any similar successor organizations and any appropriate nonprofit organizations, including those engaged in service corps projects.

(3) Annual meeting participants shall, at a minimum:

(a) Review the conservation corps projects completed in the previous year, including an analysis of successes and opportunities for improvement; and

(b) Establish a work plan for the coming year, including the setting of annual priorities or criteria consistent with this chapter to guide crew development and the development of plans to pursue funding from various sources to expand the conservation corps. [2011 c 20 § 11.]

Findings—Intent—2011 c 20: See note following RCW 43.220.020.

43.220.080 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.220.090 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.220.120 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.220.130 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.220.160 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.220.170 Exemption from unemployment compensation coverage. The services of corps members are exempt from unemployment compensation coverage under RCW 50.44.040(4) and the enrollees shall be so advised by the department. [2011 c 20 § 8; 1983 1st ex.s. c 40 § 17.]

Findings—Intent—2011 c 20: See note following RCW 43.220.020.

43.220.180 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.220.190 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.220.210 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.220.231 Limitation on use of funds. (1) An amount not to exceed five percent of the funds available for the

Washington conservation corps may be expended on agency administrative costs.

(2) An amount not to exceed twenty percent of the funds available for the Washington conservation corps may be expended for costs included in subsection (1) of this section and program support costs.

(3) A minimum of eighty percent of the funds available for the Washington conservation corps shall be expended for corps member salaries and benefits and for direct supervision of corps members.

(4) Consistent with any fund source requirements, any state agency using federal funds to sponsor fee-for-service Washington conservation corps crews must contract with the Washington department of veterans affairs for at least five percent of the federal funding to sponsor veteran conservation corps crews operating under RCW 43.60A.150. This requirement applies statewide. [2011 c 20 § 9; 1999 c 280 § 7.]

Findings—Intent—2011 c 20: See note following RCW 43.220.020.

43.220.250 Reimbursement of nonprofit corporations for certain services. A nonprofit corporation which contracts with the department to provide a specific service, appropriate for the administration of this chapter which the department cannot otherwise provide, may be reimbursed at the discretion of the department for the reasonable costs the department would absorb for providing those services. [2011 c 20 § 10; 1985 c 230 § 5.]

Findings—Intent—2011 c 20: See note following RCW 43.220.020.

43.220.905 Intent—Application—2011 c 20. It is the intent of this act to centralize the administration of the Washington conservation corps, which was previously administered by the departments of ecology, natural resources, and fish and wildlife and the state parks and recreation commission, into the department of ecology. This act is prospective only, and any grant awards or conservation corps crew or individual placements finalized by other agencies or partners prior to July 22, 2011, remain unaffected by this act. [2011 c 20 § 3.]

Findings—Intent—2011 c 20: See note following RCW 43.220.020.

Chapter 43.235 RCW

DOMESTIC VIOLENCE FATALITY REVIEW PANELS

Sections

- 43.235.020 Coordination of review—Authority of coordinating entity—Regional and statewide domestic violence fatality review panels—Citizen requests.
- 43.235.030 Domestic violence fatality review panels—Composition—Reports.
- 43.235.800 Statewide report.

43.235.020 Coordination of review—Authority of coordinating entity—Regional and statewide domestic violence fatality review panels—Citizen requests. (1) Subject to the availability of state funds, the department shall contract with an entity with expertise in domestic violence policy and education and with a statewide perspective to

coordinate review of domestic violence fatalities. The coordinating entity shall be authorized to:

- (a) Convene regional review panels;
- (b) Convene statewide issue-specific review panels;
- (c) Gather information for use of regional or statewide issue-specific review panels;
- (d) Provide training and technical assistance to regional or statewide issue-specific review panels;
- (e) Compile information and issue reports with recommendations; and
- (f) Establish a protocol that may be used as a guideline for identifying domestic violence related fatalities, forming review panels, convening reviews, and selecting which cases to review. The coordinating entity may also establish protocols for data collection and preservation of confidentiality.

(2)(a) The coordinating entity may convene a regional or statewide issue-specific domestic violence fatality review panel to review any domestic violence fatality.

(b) Private citizens may request a review of a particular death by submitting a written request to the coordinating entity within two years of the death. Of these, the appropriate regional review panel may review those cases which fit the criteria set forth in the protocol for the project. [2011 c 105 § 1; 2000 c 50 § 2.]

43.235.030 Domestic violence fatality review panels—Composition—Reports. (1) Regional domestic violence fatality review panels may include, as appropriate, the following:

- (a) Medical personnel with expertise in domestic violence abuse;
- (b) Coroners or medical examiners or others experienced in the field of forensic pathology, if available;
- (c) County prosecuting attorneys or municipal attorneys;
- (d) Domestic violence shelter service staff or domestic violence victims' advocates;
- (e) Law enforcement personnel;
- (f) Local health department staff;
- (g) Child protective services workers;
- (h) Community corrections professionals;
- (i) Perpetrator treatment program provider;
- (j) School teachers, guidance counselors, or student health services staff; and
- (k) Judges, court administrators, and/or their representatives.

(2) Regional domestic violence fatality review panels may also invite other relevant persons to serve on an ad hoc basis and participate as full members of the review panel for a particular review. These persons may include, but are not limited to:

- (a) Individuals with particular expertise helpful to the regional review panel;
- (b) Representatives of organizations or agencies that had contact with or provided services to the homicide victim or to the alleged perpetrator.

(3) The regional review panels shall make periodic reports to the coordinating entity and shall make a final report to the coordinating entity with regard to every fatality that is reviewed.

(4) Statewide issue-specific panels must include persons with particular subject matter expertise helpful to the panel.

The statewide issue-specific review panels must make periodic reports to the coordinating entity and must make a final report to the coordinating entity for every fatality that is reviewed. [2011 c 105 § 2; 2000 c 50 § 3.]

43.235.800 Statewide report. A biennial statewide report shall be issued by the coordinating entity in December of even-numbered years, ending in 2010. The coordinating entity may subsequently issue periodic reports containing recommendations on policy changes that would improve program performance, and issues identified through the work of the regional panels. Copies of this report shall be distributed to the governor, to the appropriate legislative committees, and to those agencies involved in the regional domestic violence fatality review panels. [2011 c 105 § 3; 2000 c 50 § 7.]

Chapter 43.320 RCW

DEPARTMENT OF FINANCIAL INSTITUTIONS

Sections

43.320.140 Mortgage lending fraud prosecution account—Created. (Expires June 30, 2016.)

43.320.140 Mortgage lending fraud prosecution account—Created. (Expires June 30, 2016.) (1) The mortgage lending fraud prosecution account is created in the custody of the state treasurer. All receipts from the surcharge imposed in RCW 36.22.181, except those retained by the county auditor for administration, must be deposited into the account. Except as otherwise provided in this section, expenditures from the account may be used only for criminal prosecution of fraudulent activities related to mortgage lending fraud crimes. Only the director of the department of financial institutions or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) This section expires June 30, 2016. [2011 c 129 § 1; 2006 c 21 § 2; 2003 c 289 § 2.]

Effective date—2011 c 129: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 29, 2011." [2011 c 129 § 3.]

Chapter 43.325 RCW

ENERGY FREEDOM PROGRAM

Sections

43.325.080 Electricity and biofuel usage goals—Rules.

43.325.080 Electricity and biofuel usage goals—Rules. (1) By June 1, 2010, the department shall adopt rules to define practicability and clarify how state agencies will be evaluated in determining whether they have met the goals set out in RCW 43.19.648(1). At a minimum, the rules must address:

- (a) Criteria for determining how the goal in RCW 43.19.648(1) will be met by June 1, 2015;
- (b) Factors considered to determine compliance with the goal in RCW 43.19.648(1), including but not limited to: The

regional availability of fuels; vehicle costs; differences between types of vehicles, vessels, or equipment; the cost of program implementation; and cost differentials in different parts of the state; and

(c) A schedule for phased-in progress towards meeting the goal in RCW 43.19.648(1) that may include different schedules for different fuel applications or different quantities of biofuels.

(2) By June 1, 2015, the department shall adopt rules to define practicability and clarify how local government subdivisions of the state will be evaluated in determining whether they have met the goals set out in RCW 43.19.648(2). At a minimum, the rules must address:

(a) Criteria for determining how the goal in RCW 43.19.648(2) will be met by June 1, 2018;

(b) Factors considered to determine compliance with the goal in RCW 43.19.648(2), including but not limited to: The regional availability of fuels; vehicle costs; differences between types of vehicles, vessels, or equipment; the cost of program implementation; and cost differentials in different parts of the state; and

(c) A schedule for phased-in progress towards meeting the goal in RCW 43.19.648(2) that may include different schedules for different fuel applications or different quantities of biofuels. [2011 c 353 § 5; 2007 c 348 § 204.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Chapter 43.330 RCW

DEPARTMENT OF COMMERCE

Sections

43.330.010	Definitions.
43.330.062	Recruitment and retention of business—Protocols for associate development organizations and department staff.
43.330.080	Coordination of community and economic development services—Training to and contracts with county-designated associate development organizations—Scope of services.
43.330.082	Contracting associate development organizations—Performance measures—Remediation plans—Reports.
43.330.094	Tourism development and promotion account—Promotion of tourism industry.
43.330.175	Repealed.
43.330.250	Economic development strategic reserve account—Authorized expenditures—Transfer of excess funds to the education construction account.
43.330.400	Broadband mapping account—Federal broadband data improvement act funding—Coordination of broadband mapping activities.
43.330.403	Reporting availability of high-speed internet—Survey of high-speed internet infrastructure owned or leased by state agencies—Geographic information system map—Rules.
43.330.406	Procurement of geographic information system map—Accountability and oversight structure—Application of public records act.
43.330.409	Broadband mapping, deployment, and adoption—Reports.
43.330.412	Community technology opportunity program—Administration—Grant program.
43.330.415	Washington community technology opportunity account.
43.330.418	Broadband deployment and adoption—Governor's actions—Oversight and implementation by the department.
43.330.421	Advisory group on digital inclusion and technology planning.
43.330.910	Transfer of certain powers, duties, and functions of the department of information services—High-speed internet activities.

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

(1) "Associate development organization" means a local economic development nonprofit corporation that is broadly representative of community interests.

(2) "Department" means the department of commerce.

(3) "Director" means the director of the department of commerce.

(4) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business in this state under state or federal law.

(5) "Microenterprise development organization" means a community development corporation, a nonprofit development organization, a nonprofit social services organization or other locally operated nonprofit entity that provides services to low-income entrepreneurs.

(6) "Small business" has the same meaning as provided in RCW 39.29.006.

(7) "Statewide microenterprise association" means a nonprofit entity with microenterprise development organizations as members that serves as an intermediary between the department of commerce and local microenterprise development organizations. [2011 c 286 § 4; 2009 c 565 § 2; 2007 c 322 § 2; 1993 c 280 § 3.]

Findings—Purpose—Intent—2007 c 322: See note following RCW 43.330.290.

43.330.062 Recruitment and retention of business—Protocols for associate development organizations and department staff. In carrying out its responsibilities under RCW 43.330.060 and 43.330.080, the department must establish protocols to be followed by associate development organizations and department staff for the recruitment and retention of businesses. The protocols must specify the circumstances under which an associate development organization is required to notify the department of its business recruitment and retention efforts and when the department must notify the associate development organization of its business recruitment and retention efforts. The protocols established may not require the release of proprietary information or the disclosure of information that a client company has requested remain confidential. The department must require compliance with the protocols in its contracts with associate development organizations. [2011 c 286 § 1.]

43.330.080 Coordination of community and economic development services—Training to and contracts with county-designated associate development organizations—Scope of services. In carrying out its obligations under RCW 43.330.070, the department must provide business services training to and contract with county-designated associate development organizations to increase the support for and coordination of community and economic development services in communities or regional areas. The business services training provided to the organizations contracted with must include, but need not be limited to, training in the fundamentals of export assistance and the services available from private and public export assistance providers in the state. The organizations contracted within each community or regional area must work closely with the department to carry out state-identified economic development priorities and must be broadly representative of community and eco-

economic interests. The organization must be capable of identifying key economic and community development problems, developing appropriate solutions, and mobilizing broad support for recommended initiatives. The contracting organization must work with and include local governments, local chambers of commerce, workforce development councils, port districts, labor groups, institutions of higher education, community action programs, and other appropriate private, public, or nonprofit community and economic development groups. The scope of services delivered under these contracts must include two broad areas of work:

(1) Direct assistance, including business planning, to companies throughout the county who need support to stay in business, expand, or relocate to Washington from out of state or other countries. Assistance must comply with business recruitment and retention protocols established in RCW 43.330.062, and includes:

(a) Working with the appropriate partners throughout the county, including but not limited to, local governments, workforce development councils, port districts, community and technical colleges and higher education institutions, export assistance providers, the Washington manufacturing services, the Washington state quality award council, small business assistance programs, and other federal, state, and local programs to facilitate the alignment of planning efforts and the seamless delivery of business support services within the entire county;

(b) Providing information on state and local permitting processes, tax issues, export assistance, and other essential information for operating, expanding, or locating a business in Washington;

(c) Marketing Washington and local areas as excellent locations to expand or relocate a business and positioning Washington as a globally competitive place to grow business, which may include developing and executing regional plans to attract companies from out of state;

(d) Working with businesses on site location and selection assistance;

(e) Providing business retention and expansion services throughout the county, including business outreach and monitoring efforts to identify and address challenges and opportunities faced by businesses;

(f) Participating in economic development system-wide discussions regarding gaps in business start-up assistance in Washington; and

(g) Providing or facilitating the provision of export assistance through workshops or one-on-one assistance; and

(2) Support for regional economic research and regional planning efforts to implement target industry sector strategies and other economic development strategies, including cluster-based strategies, that support increased living standards and increase foreign direct investment throughout Washington. Activities include:

(a) Participation in regional planning efforts with workforce development councils involving coordinated strategies around workforce development and economic development policies and programs. Coordinated planning efforts must include, but not be limited to, assistance to industry clusters in the region;

(b) Participation between the contracting organization and the state board for community and technical colleges as

created in RCW 28B.50.050, and any community and technical colleges in providing for the coordination of the job skills training program and the customized training program within its region;

(c) Collecting and reporting data as specified by the contract with the department for statewide systemic analysis. The department must consult with the Washington state economic development commission in the establishment of such uniform data as is needed to conduct a statewide systemic analysis of the state's economic development programs and expenditures. In cooperation with other local, regional, and state planning efforts, contracting organizations may provide insight into the needs of target industry clusters, business expansion plans, early detection of potential relocations or layoffs, training needs, and other appropriate economic information;

(d) In conjunction with other governmental jurisdictions and institutions, participate in the development of a county-wide economic development plan, consistent with the state comprehensive plan for economic development developed by the Washington state economic development commission. [2011 c 286 § 2; 2009 c 151 § 10; 2007 c 249 § 2; 1997 c 60 § 1; 1993 c 280 § 11.]

Findings—Intent—2007 c 249: "The legislature finds that economic development success requires coordinated state and local efforts. The legislature further finds that economic development happens at the local level. County-designated associate development organizations serve as a networking tool and resource hub for business retention, expansion, and relocation in Washington. Economic development success requires an adequately funded and coordinated state effort and an adequately funded and coordinated local effort. The legislature intends to bolster the partnership between state and local economic development efforts, provide increased funding for local economic development services, and increase local economic development service effectiveness, efficiency, and outcomes." [2007 c 249 § 1.]

43.330.082 Contracting associate development organizations—Performance measures—Remediation plans—Reports. (1)(a) Contracting associate development organizations must provide the department with measures of their performance. Annual reports must include information on the impact of the contracting organization on employment, wages, tax revenue, and capital investment. Specific measures must be developed in the contracting process between the department and the contracting organization every two years. Except as provided in (b) of this subsection, performance measures should be consistent across regions to allow for statewide evaluation.

(b) In addition to the measures required in (a) of this subsection, contracting associate development organizations in counties with a population greater than one million five hundred thousand persons must include the following measures in reports to the department:

(i) The number of small businesses that received retention and expansion services, and the outcome of those services;

(ii) The number of businesses located outside of the boundaries of the largest city within the contracting associate development organization's region that received recruitment, retention, and expansion services, and the outcome of those services.

(2)(a) The department and contracting organizations must agree upon specific target levels for the performance

measures in subsection (1) of this section. Comparison of agreed thresholds and actual performance must occur annually.

(b) Contracting organizations that fail to achieve the agreed performance targets in more than one-half of the agreed measures must develop remediation plans to address performance gaps. The remediation plans must include revised performance thresholds specifically chosen to provide evidence of progress in making the identified service changes.

(c) Contracts and state funding must be terminated for one year for organizations that fail to achieve the agreed upon progress toward improved performance defined under (b) of this subsection. During the year in which termination for nonperformance is in effect, organizations must review alternative delivery strategies to include reorganization of the contracting organization, merging of previous efforts with existing regional partners, and other specific steps toward improved performance. At the end of the period of termination, the department may contract with the associate development organization or its successor as it deems appropriate.

(3) The department must report to the legislature and the Washington economic development commission by December 31st of each even-numbered year on the performance results of the contracts with associate development organizations. [2011 c 286 § 3; 2009 c 518 § 15; 2007 c 249 § 3.]

Findings—Intent—2007 c 249: See note following RCW 43.330.080.

43.330.094 Tourism development and promotion account—Promotion of tourism industry. The tourism development and promotion account is created in the state treasury. All receipts from RCW 36.102.060(10) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of commerce only for the purposes of expanding and promoting the tourism industry in the state of Washington. During the 2009-2011 fiscal biennium, the legislature may transfer from the tourism development and promotion account to the state general fund such amounts as reflect the excess fund balance of the account. [2011 c 5 § 913; 2009 c 565 § 6; 2007 c 228 § 202; 2003 c 153 § 4; 1997 c 220 § 223 (Referendum Bill No. 48, approved June 17, 1997).]

Effective date—2011 c 5: See note following RCW 43.79.487.

Part headings not law—2007 c 228: See RCW 43.336.900.

Findings—2003 c 153: See note following RCW 43.330.090.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Additional notes found at www.leg.wa.gov

43.330.175 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.330.250 Economic development strategic reserve account—Authorized expenditures—Transfer of excess funds to the education construction account. (1) The economic development strategic reserve account is created in the state treasury to be used only for the purposes of this section.

(2) Only the governor, with the recommendation of the director of the department of commerce and the economic development commission, may authorize expenditures from the account.

(3) Expenditures from the account shall be made in an amount sufficient to fund a minimum of one staff position for the economic development commission and to cover any other operational costs of the commission.

(4) During the 2009-2011 and 2011-2013 fiscal biennia, moneys in the account may also be transferred into the state general fund.

(5) Expenditures from the account may be made to prevent closure of a business or facility, to prevent relocation of a business or facility in the state to a location outside the state, or to recruit a business or facility to the state. Expenditures may be authorized for:

(a) Workforce development;

(b) Public infrastructure needed to support or sustain the operations of the business or facility; and

(c) Other lawfully provided assistance, including, but not limited to, technical assistance, environmental analysis, relocation assistance, and planning assistance. Funding may be provided for such assistance only when it is in the public interest and may only be provided under a contractual arrangement ensuring that the state will receive appropriate consideration, such as an assurance of job creation or retention.

(6) The funds shall not be expended from the account unless:

(a) The circumstances are such that time does not permit the director of the department of commerce or the business or facility to secure funding from other state sources;

(b) The business or facility produces or will produce significant long-term economic benefits to the state, a region of the state, or a particular community in the state;

(c) The business or facility does not require continuing state support;

(d) The expenditure will result in new jobs, job retention, or higher incomes for citizens of the state;

(e) The expenditure will not supplant private investment; and

(f) The expenditure is accompanied by private investment.

(7) No more than three million dollars per year may be expended from the account for the purpose of assisting an individual business or facility pursuant to the authority specified in this section.

(8) If the account balance in the strategic reserve account exceeds fifteen million dollars at any time, the amount in excess of fifteen million dollars shall be transferred to the education construction account. [2011 1st sp.s. c 50 § 956. Prior: 2009 c 565 § 13; 2009 c 564 § 943; 2008 c 329 § 914; 2005 c 427 § 1.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

43.330.400 Broadband mapping account—Federal broadband data improvement act funding—Coordina-

tion of broadband mapping activities. (1) The broadband mapping account is established in the custody of the state treasurer. The department shall deposit into the account such funds received from legislative appropriation, federal funding, and donated funds from private and public sources. Expenditures from the account may be used only for the purposes of RCW 43.330.403 through 43.330.409. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) The department is the single eligible entity in the state for purposes of the federal broadband mapping activities.

(3) Federal funding received by the department for broadband mapping activities must be used in accordance with any federal requirements and, subject to those requirements, may be distributed by the department on a competitive basis to other entities in the state.

(4) The department shall consult with the office of financial management and the utilities and transportation commission in coordinating broadband mapping activities. In carrying out any broadband mapping activities, the provisions of P.L. 110-385, Title I, regarding trade secrets, commercial or financial information, and privileged or confidential information submitted by the federal communications commission or a broadband provider are deemed to encompass the consulted agencies. [2011 1st sp.s. c 43 § 603; 2009 c 509 § 2. Formerly RCW 43.105.370.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Intent—Purpose—2009 c 509: "(1) The legislature finds that the deployment and adoption of high-speed internet services and technology advancements enhance economic development and public safety for the state's communities. Such deployment also offers improved health care, access to consumer and legal services, increased educational and civic participation opportunities, and a better quality of life for the state's residents. The legislature further finds that improvements in the deployment and adoption of high-speed internet services and the strategic inclusion of technology advancements and technology education are critical to ensuring that Washington remains competitive and continues to provide a skilled workforce, attract businesses, and stimulate job growth.

(2) The legislature intends to support strategic partnerships of public, private, nonprofit, and community-based sectors in the continued growth and development of high-speed internet services and information technology. The legislature further intends to ensure that all Washington citizens, businesses, schools, and organizations are able to obtain and utilize broadband fully, regardless of location, economic status, literacy level, age, disability, structure, or size. In addition, the legislature intends that a statewide assessment of the availability, location, service levels, and other characteristics of high-speed internet services and other advanced telecommunications services in the state be conducted.

(3) In recognition of the importance of broadband deployment and adoption to the economy, health, safety, and welfare of the people of Washington, it is the purpose of this act to make high-speed internet service more readily available throughout the state, especially in areas and for populations with a low utilization rate." [2009 c 509 § 1.]

Effective date—2009 c 509: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 509 § 16.]

43.330.403 Reporting availability of high-speed internet—Survey of high-speed internet infrastructure owned or leased by state agencies—Geographic informa-

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tion system map—Rules. (1) Subject to the availability of federal or state funding, the department may:

(a) Develop an interactive web site to allow residents to self-report whether high-speed internet is available at their home or residence and at what speed; and

(b) Conduct a detailed survey of all high-speed internet infrastructure owned or leased by state agencies and create a geographic information system map of all high-speed internet infrastructure owned or leased by the state.

(2) State agencies responding to a survey request from the department under subsection (1)(b) of this section shall respond in a reasonable and timely manner, not to exceed one hundred twenty days. The department shall request of state agencies, at a minimum:

(a) The total bandwidth of high-speed internet infrastructure owned or leased;

(b) The cost of maintaining that high-speed internet infrastructure, if owned, or the price paid for the high-speed internet infrastructure, if leased; and

(c) The leasing entity, if applicable.

(3) The department may adopt rules as necessary to carry out the provisions of this section.

(4) For purposes of this section, "state agency" includes every state office, department, division, bureau, board, commission, or other state agency. [2011 1st sp.s. c 43 § 604; 2009 c 509 § 3. Formerly RCW 43.105.372.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Intent—Purpose—Effective date—2009 c 509: See notes following RCW 43.105.370.

43.330.406 Procurement of geographic information system map—Accountability and oversight structure—

Application of public records act. (1) The department is authorized, through a competitive bidding process, to procure on behalf of the state a geographic information system map detailing high-speed internet infrastructure, service availability, and adoption. This geographic information system map may include adoption information, availability information, type of high-speed internet deployment technology, and available speed tiers for high-speed internet based on any publicly available data.

(2) The department may procure this map either by:

(a) Contracting for and purchasing a completed map or updates to a map from a third party; or

(b) Working directly with the federal communications commission to accept publicly available data.

(3) The department shall establish an accountability and oversight structure to ensure that there is transparency in the bidding and contracting process and full financial and technical accountability for any information or actions taken by a third-party contractor creating this map.

(4) In contracting for purchase of the map or updates to a map in subsection (2)(a) of this section, the department may take no action, nor impose any condition on the third party, that causes any record submitted by a public or private broadband service provider to the third party to meet the standard of a public record as defined in RCW 42.56.010. This prohibition does not apply to any records delivered to the department by the third party as a component of the map. For the purpose of RCW 42.56.010(3), the purchase by the depart-

ment of a completed map or updates to a map may not be deemed use or ownership by the department of the underlying information used by the third party to complete the map.

(5) Data or information that is publicly available as of July 1, 2009, will not cease to be publicly available due to any provision of chapter 509, Laws of 2009. [2011 1st sp.s. c 43 § 605; 2009 c 509 § 4. Formerly RCW 43.105.374.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Intent—Purpose—Effective date—2009 c 509: See notes following RCW 43.105.370.

43.330.409 Broadband mapping, deployment, and adoption—Reports. (1) The department, in coordination with the utilities and transportation commission, and such advisors as the department chooses, may prepare regular reports that identify the following:

(a) The geographic areas of greatest priority for the deployment of advanced telecommunications infrastructure in the state;

(b) A detailed explanation of how any amount of funding received from the federal government for the purposes of broadband mapping, deployment, and adoption will be or have been used; and

(c) A determination of how nonfederal sources may be utilized to achieve the purposes of broadband mapping, deployment, and adoption activities in the state.

(2) To the greatest extent possible, the initial report should be based upon the information identified in the geographic system maps developed under the requirements of this chapter.

(3) The initial report should be delivered to the appropriate committees of the legislature as soon as feasible, but no later than January 18, 2010.

(4) Any future reports prepared by the department based upon the requirements of subsection (1) of this section should be delivered to the appropriate committees of the legislature by January 15th of each year. [2011 1st sp.s. c 43 § 606; 2009 c 509 § 5. Formerly RCW 43.105.376.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Intent—Purpose—Effective date—2009 c 509: See notes following RCW 43.105.370.

43.330.412 Community technology opportunity program—Administration—Grant program. The community technology opportunity program is created to support the efforts of community technology programs throughout the state. The community technology opportunity program must be administered by the department. The department may contract for services in order to carry out the department's obligations under this section.

(1) In implementing the community technology opportunity program the director must, to the extent funds are appropriated for this purpose:

(a) Provide organizational and capacity building support to community technology programs throughout the state, and identify and facilitate the availability of other public and private sources of funds to enhance the purposes of the program and the work of community technology programs. No more

than fifteen percent of funds received by the director for the program may be expended on these functions;

(b) Establish a competitive grant program and provide grants to community technology programs to provide training and skill-building opportunities; access to hardware and software; internet connectivity; digital media literacy; assistance in the adoption of information and communication technologies in low-income and underserved areas of the state; and development of locally relevant content and delivery of vital services through technology.

(2) Grant applicants must:

(a) Provide evidence that the applicant is a nonprofit entity or a public entity that is working in partnership with a nonprofit entity;

(b) Define the geographic area or population to be served;

(c) Include in the application the results of a needs assessment addressing, in the geographic area or among the population to be served: The impact of inadequacies in technology access or knowledge, barriers faced, and services needed;

(d) Explain in detail the strategy for addressing the needs identified and an implementation plan including objectives, tasks, and benchmarks for the applicant and the role that other organizations will play in assisting the applicant's efforts;

(e) Provide evidence of matching funds and resources, which are equivalent to at least one-quarter of the grant amount committed to the applicant's strategy;

(f) Provide evidence that funds applied for, if received, will be used to provide effective delivery of community technology services in alignment with the goals of this program and to increase the applicant's level of effort beyond the current level; and

(g) Comply with such other requirements as the director establishes.

(3) The director may use no more than ten percent of funds received for the community technology opportunity program to cover administrative expenses.

(4) The director must establish expected program outcomes for each grant recipient and must require grant recipients to provide an annual accounting of program outcomes. [2011 1st sp.s. c 43 § 607; 2009 c 509 § 6; 2008 c 262 § 6. Formerly RCW 43.105.380, 28B.32.010.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Intent—Purpose—Effective date—2009 c 509: See notes following RCW 43.105.370.

43.330.415 Washington community technology opportunity account. The Washington community technology opportunity account is established in the state treasury. The governor or the governor's designee and the director or the director's designee shall deposit into the account federal grants to the state, legislative appropriations, and donated funds from private and public sources for purposes related to broadband deployment and adoption, including matching funds required by *the act. Donated funds from private and public sources may be deposited into the account. Expenditures from the account may be used only as matching funds for federal and other grants to fund the operation of the com-

munity technology opportunity program under this chapter, and to fund other broadband-related activities authorized in chapter 509, Laws of 2009. Only the director or the director's designee may authorize expenditures from the account. [2011 1st sp.s. c 43 § 608; 2009 c 509 § 8; 2008 c 262 § 8. Formerly RCW 43.105.382, 28B.32.030.]

***Reviser's note:** "The act" refers to the American recovery and reinvestment act of 2009. The reference to that act was removed by 2011 1st sp.s. c 43 § 608.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Intent—Purpose—Effective date—2009 c 509: See notes following RCW 43.105.370.

43.330.418 Broadband deployment and adoption—Governor's actions—Oversight and implementation by the department. (1) The governor may take all appropriate steps to seek federal funding in order to maximize investment in broadband deployment and adoption in the state of Washington. Such steps may include the designation of a broadband deployment and adoption coordinator; review and prioritization of grant applications by public and private entities as directed by the national telecommunications and information administration, the rural utility services, and the federal communications commission; disbursement of block grant funding; and direction to state agencies to provide staffing as necessary to carry out this section. The authority for overseeing broadband adoption and deployment efforts on behalf of the state is vested in the department.

(2) The department may apply for federal funds and other grants or donations, may deposit such funds in the Washington community technology opportunity account created in RCW 43.330.415, may oversee implementation of federally funded or mandated broadband programs for the state and may adopt rules to administer the programs. These programs may include but are not limited to the following:

(a) Engaging in periodic statewide surveys of residents, businesses, and nonprofit organizations concerning their use and adoption of high-speed internet, computer, and related information technology for the purpose of identifying barriers to adoption;

(b) Working with communities to identify barriers to the adoption of broadband service and related information technology services by individuals, nonprofit organizations, and businesses;

(c) Identifying broadband demand opportunities in communities by working cooperatively with local organizations, government agencies, and businesses;

(d) Creating, implementing, and administering programs to improve computer ownership, technology literacy, digital media literacy, and high-speed internet access for populations not currently served or underserved in the state. This may include programs to provide low-income families, community-based nonprofit organizations, nonprofit entities, and public entities that work in partnership with nonprofit entities to provide increased access to computers and broadband, with reduced cost internet access;

(e) Administering the community technology opportunity program under RCW 43.330.412 and 43.330.415;

(f) Creating additional programs to spur the development of high-speed internet resources in the state;

(g) Establishing technology literacy and digital inclusion programs and establishing low-cost hardware, software, and internet purchasing programs that may include allowing participation by community technology programs in state purchasing programs; and

(h) Developing technology loan programs targeting small businesses or businesses located in unserved and underserved areas. [2011 1st sp.s. c 43 § 609; 2009 c 509 § 9. Formerly RCW 43.105.390.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Intent—Purpose—Effective date—2009 c 509: See notes following RCW 43.105.370.

43.330.421 Advisory group on digital inclusion and technology planning. Subject to the availability of federal or state funding, the department may convene an advisory group on digital inclusion and technology planning. The advisory group may include, but is not limited to, volunteer representatives from community technology organizations, telecommunications providers, higher education institutions, K-12 education institutions, public health institutions, public housing entities, and local government and other governmental entities that are engaged in community technology activities. [2011 1st sp.s. c 43 § 610; 2009 c 509 § 10. Formerly RCW 43.105.400.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Intent—Purpose—Effective date—2009 c 509: See notes following RCW 43.105.370.

43.330.910 Transfer of certain powers, duties, and functions of the department of information services—High-speed internet activities. (1) All powers, duties, and functions of the department of information services pertaining to high-speed internet activities are transferred to the department of commerce. All references to the director or the department of information services in the Revised Code of Washington shall be construed to mean the director or the department of commerce when referring to the functions transferred in this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of information services pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the department of commerce. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of information services in carrying out the powers, functions, and duties transferred shall be made available to the department of commerce. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the department of commerce.

(b) Any appropriations made to the department of information services for carrying out the powers, functions, and duties transferred shall, on October 1, 2011, be transferred and credited to the department of commerce.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and

functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the department of information services engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the department of commerce. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of commerce to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the department of information services pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the department of commerce. All existing contracts and obligations shall remain in full force and shall be performed by the department of commerce.

(5) The transfer of the powers, duties, functions, and personnel of the department of information services shall not affect the validity of any act performed before October 1, 2011.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) All classified employees of the department of information services assigned to the department of commerce under this section whose positions are within an existing bargaining unit description at the department of commerce shall become a part of the existing bargaining unit at the department of commerce and shall be considered an appropriate inclusion or modification of the existing bargaining unit under the provisions of chapter 41.80 RCW. [2011 1st sp.s. c 43 § 1008.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

**Chapter 43.333 RCW
INNOVATE WASHINGTON**

Sections

- 43.333.010 Innovate Washington—Created—Mission—Transfer of administrative responsibilities for facilities located at the Washington technology center and Spokane intercollegiate research and technology institute—Five-year business plan requirements.
- 43.333.020 Board of directors—Composition—Meetings—Duties.
- 43.333.030 Investing in innovation account.
- 43.333.040 Small business innovation assistance program.
- 43.333.050 Investing in innovation program—Administration.
- 43.333.900 Transfer of powers, duties, and functions of Spokane intercollegiate research and technology institute and Washington technology center.
- 43.333.901 Effective date—2011 1st sp.s. c 14.

43.333.010 Innovate Washington—Created—Mission—Transfer of administrative responsibilities for facilities located at the Washington technology center and Spokane intercollegiate research and technology insti-

tute—Five-year business plan requirements. (1) Innovate Washington is hereby created as a state agency exercising public and essential governmental functions. Innovate Washington is created as the successor to the Washington technology center and the Spokane intercollegiate research and technology institute. Innovate Washington is created to be a collaborative effort between the state’s public and private institutions of higher education, private industry, and government and is to be the primary agency focused on growing the innovation-based economic sectors of the state and responding to the technology transfer needs of existing businesses in the state.

(2) The mission of innovate Washington is to make Washington the best place to develop, build, and deploy innovative products, services, and solutions to serve the world. To carry out this mission, innovate Washington is to: Develop and strengthen academic-industry relationships through research and assistance that is primarily of interest to existing small and medium-sized Washington-based companies; facilitate company growth through early stage financing; and leverage state investments in sector-focused, innovation-based economic development initiatives consistent with the state’s economic development strategic plan and export strategy. As funds are available, innovate Washington shall:

(a) Facilitate leading edge collaborative research and technology transfer opportunities to existing state businesses directly and by working with industry associations and innovation partnership zones;

(b) Coordinate its activities with the commercialization and technology transfer activities of the state’s research institutions to facilitate research that supports and develops state industries;

(c) Provide methods, systems, and venues for effective interaction and collaboration between the state’s technology-based industries and its institutions of higher education;

(d) Provide assistance and support to businesses in:

(i) Securing federal and private funds to support product research and commercialization;

(ii) Developing and integrating technology in new or enhanced products and services; and

(iii) Launching those products and services in sustainable businesses in the state;

(e) Establish programmatic activities that, through partnerships with the private sector, increase the competitiveness of state industries. This may include support provided to firms in innovation partnership zones established under RCW 43.330.270;

(f) Provide opportunities for training undergraduate and graduate students in technology transfer and commercialization processes through direct involvement in research and industry interactions;

(g) Work with regional public and private utilities, district energy providers, the utilities and transportation commission, and the state energy office to improve the alignment of investments in clean energy technologies with existing state policies. This may include facilitating public-private partnerships to encourage research and development of emerging clean and renewable energy technologies;

(h) Serve as the lead entity in the state for coordinating clean energy-related initiatives and establishing a long-term funding strategy for programs targeted at expanding the clean

energy sector, while maintaining existing energy policy and regulatory functions at the department of commerce within the state energy office;

(i) Administer technology and innovation grant and loan programs including bridge funding programs for the state's technology sector;

(j) Emphasize and develop nonstate support of program activities; and

(k) Facilitate public-private partnerships that support the growth of strategic, innovation-based sectors.

(3)(a) Administrative responsibilities for the Washington technology center facilities located on the University of Washington Seattle campus and the Spokane intercollegiate research and technology institute facilities located on the Riverpoint campus operated by Washington State University Spokane are hereby transferred to innovate Washington except to the extent that such responsibilities are the subject of an interagency agreement between the University of Washington and the Washington technology center, in which case the terms of that agreement control. The facilities shall be used for purposes consistent with the obligations of innovate Washington under this chapter. As initially established, the University of Washington and Washington State University shall continue to provide the facility support and maintenance for these facilities as required by innovate Washington, except to the extent that such responsibilities are the subject of an interagency agreement between the University of Washington and the Washington technology center, in which case the terms of that agreement control. Other institutions of higher education may provide facility support and maintenance subsequently.

(b) The University of Washington, Washington State University, and other institutions of higher education participating in innovate Washington programs shall provide the affiliated staff and faculty participating in these programs at their own expense.

(4) The facilities of innovate Washington may be made available to any research institution or any public institution of higher education within the state when this would benefit specific program needs consistent with this chapter.

(5) Innovate Washington shall, by December 1, 2012, develop a five-year business plan that must be updated by December 1st of every even-numbered year and submitted to the appropriate committees of the legislature. The plan must include:

(a) A plan for operating additional facilities in Vancouver, the Tri-Cities, Bellingham, and such other locations as the innovate Washington board identifies as appropriate;

(b) Identification and specification of activities to be undertaken by those operating each of innovate Washington's facilities to include potential collaboration with innovative programs at the state's community and technical colleges and methods of working with the centers of excellence established under RCW 28B.50.902 to identify businesses that could benefit from innovate Washington services;

(c) The process to be followed, developed in collaboration with impact Washington or any successor manufacturing extension partnership program operating in the state, to ensure that impact Washington clients have ready access to innovate Washington's services when appropriate and that

companies being assisted by innovate Washington have ready access to impact Washington's services; and

(d) Mechanisms for outreach to firms operating in the state's innovation partnership zones established under RCW 43.330.270 to ensure such firms benefit from innovate Washington services.

(6) The five-year business plan required under this section must include a clean energy component that includes:

(a) A strategy for implementation of the first three market-driving initiatives identified by the clean energy leadership council in its 2010 report. These market-driving initiatives are in the areas of:

(i) Combined energy efficiency, green buildings, and smart grid;

(ii) Renewable energy resource optimization and smart grid deployment; and

(iii) Bioenergy deployment acceleration.

(b) Recommendations on ways to improve policy alignment, streamline regulatory requirements, and remove administrative barriers that limit the growth of the clean energy sector in Washington.

(7) For the purposes of this section, "lead entity" means the organization that all other state agencies must coordinate with and receive approval from in order to award state funds in support of clean energy initiatives. [2011 1st sp.s. c 14 § 1.]

43.333.020 Board of directors—Composition—Meetings—Duties. (1) The powers of innovate Washington are vested in and shall be exercised by a board of directors consisting of:

(a) The governor of the state of Washington or the governor's designee;

(b)(i) The president of the senate shall appoint one member from each of the two largest caucuses of the senate;

(ii) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives;

(c) The president of the University of Washington or the president's designee;

(d) The president of Washington State University or the president's designee;

(e) The director of the department of commerce or the director's designee;

(f) The chairs of the sector advisory committees created under this chapter shall serve as ex officio voting members; and

(g) Seven members appointed by the governor from among individuals who own or are executives at technology-based and innovative firms in the state; of these members, at least four must be from firms manufacturing in the state. The term of office for each board member appointed by the governor shall be three years except, of the initial appointees, three shall be appointed for one year and three shall be appointed for two years. Members of the board may be appointed for additional terms.

(2) The board shall meet at least biannually. The initial meeting of the board must occur before December 31, 2011.

(3) A board member may be removed by the governor for cause under RCW 43.06.070 and 43.06.080. The gover-

nor must fill any vacancy on the board by appointment for the remainder of the unexpired term.

(4)(a) The appointed members of the board shall be compensated in accordance with RCW 43.03.240 and may be reimbursed for expenses incurred in the discharge of their duties under this chapter pursuant to RCW 43.03.050 and 43.03.060.

(b) The ex officio members of the board under subsection (1)(a) and (c) through (g) of this section may be reimbursed for expenses incurred in the discharge of their duties under this chapter pursuant to RCW 43.03.050 and 43.03.060.

(c) Legislative members of the board may be reimbursed for expenses incurred in the discharge of their duties under this chapter pursuant to RCW 44.04.120.

(5) A majority of currently serving board members constitutes a quorum.

(6) Meetings of the board shall be held in accordance with the open public meetings act, chapter 42.30 RCW, and at the call of the chair or when a majority of the board members so requests. Meetings of the board may be held at any location within or out of the state, and board members may participate in a meeting of the board by means of a conference telephone or similar communication equipment under RCW 23B.08.200.

(7) The innovate Washington board must:

(a) Develop operating policies for innovate Washington programs;

(b) Appoint, and perform an annual performance review of, an executive director;

(c) Approve an annual operating budget and ensure adequate funding for operations;

(d) Approve a five-year business plan and its updates;

(e) Perform the duties required under chapter 70.210 RCW relating to the investing in innovation program;

(f) Convene representatives of the commercialization and technology transfer offices of private and public research institutions in the state to determine the best methods for:

(i) Integrating existing databases into a single database of in-state technologies and inventions;

(ii) Making the technologies in the integrated database accessible; and

(iii) Promoting the integrated database to entrepreneurs and investors for commercialization and licensing purposes;

(g) Set performance goals for each program or service established; and

(h) Provide a report to the governor and the legislature detailing the fund-raising activities and outcomes, operations, economic impact, and performance of innovate Washington. The report is due by December 1st of every year and the first report is due by December 1, 2012. The report must include measures related to customer satisfaction as well as measures of results derived from assistance provided to businesses, including but not limited to manufacturing facilities established in Washington, job creation inside and outside of Washington, new product development, new markets opened and other export measures, the adoption of new production processes, revenue and sales growth, measures that would be included in a balanced scorecard, and such other outcome-based measures as the board determines is appropriate.

(8) The board may:

(a) Make and execute agreements, contracts, and other instruments with any private, public, or nonprofit entity for the performance, operation, administration, implementation, or advancement of any program in accordance with this chapter;

(b) Employ, contract with, or engage staff, advisors, auditors, other technical or professional assistants, and such other personnel as are necessary or desirable to implement this chapter. Staff support for innovate Washington programs may be provided through cooperative agreements with any public or private institution of higher education;

(c) Solicit and receive gifts, grants, donations, sponsorships, or contributions from any federal, state, or local governmental agency or program or any private source, and expend the same for any purpose consistent with this chapter;

(d) Establish such:

(i) Affiliated organizations, that may not be considered state agencies as defined under chapter 43.88 RCW, to facilitate partnerships and program delivery with the private sector;

(ii) Special funds consistent with the provisions of chapter 43.88 RCW; and

(iii) Controls as it finds convenient for the implementation of this chapter;

(e) Create one or more advisory committees;

(f) Adopt rules consistent with this chapter;

(g) Delegate any of its powers and duties if consistent with the purposes of this chapter; and

(h) Exercise any other power reasonably required to implement the purposes of this chapter. [2011 1st sp.s. c 14 § 2.]

43.333.030 Investing in innovation account. The investing in innovation account is created in the custody of the state treasurer to receive state and federal funds, grants, private gifts, or contributions to further the purpose of innovate Washington. Expenditures from the account may be used only for the purposes of the investing in innovation programs established in chapter 70.210 RCW and any other purpose consistent with this chapter. Only the executive director of innovate Washington or the executive director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2011 1st sp.s. c 14 § 4.]

43.333.040 Small business innovation assistance program. (1) To increase participation by Washington state small business innovators in federal small business research programs, innovate Washington shall provide or contract for the provision of a small business innovation assistance program. The program must include a proposal review process and must train and assist Washington small business innovators to win awards from federal small business research programs. The program must collaborate with small business development centers, entrepreneur-in-residence programs, and other appropriate sources of technical assistance to ensure that small business innovators also receive the planning, counseling, and support services necessary to expand their businesses and protect their intellectual property.

(2) In operating the program, innovate Washington must give priority to first-time applicants to the federal small business research programs, new businesses, and firms with fewer than ten employees, and may charge a fee for its services.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Federal small business research programs" means the programs, operating pursuant to the small business innovation development act of 1982, P.L. 97-219, and the small business technology transfer act of 1992, P.L. 102-564, title II, that provide funds to small businesses to conduct research having commercial application.

(b) "Small business" means a corporation, partnership, sole proprietorship, or individual, operating a business for profit, with two hundred fifty employees or fewer, including employees employed in a subsidiary or affiliated corporation, that otherwise meets the requirements of federal small business research programs. [2011 1st sp.s. c 14 § 3.]

43.333.050 Investing in innovation program—Administration. (1) Innovate Washington shall administer the investing in innovation program.

(2) Not more than one percent of the available funds from the investing in innovation account may be used for administrative costs of the program. [2011 1st sp.s. c 14 § 13; 2003 c 403 § 8. Formerly RCW 70.210.070.]

43.333.900 Transfer of powers, duties, and functions of Spokane intercollegiate research and technology institute and Washington technology center. (1) The Spokane intercollegiate research and technology institute and the Washington technology center are hereby abolished and the powers, duties, and functions are hereby transferred to innovate Washington. Once the board created in RCW 43.333.020 has convened, all references to the Spokane intercollegiate research and technology institute or the Washington technology center in the Revised Code of Washington shall be construed to mean innovate Washington.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the Spokane intercollegiate research and technology institute or the Washington technology center shall be delivered to the custody of innovate Washington. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the Spokane intercollegiate research and technology institute or the Washington technology center shall be made available to innovate Washington. All funds, credits, or other assets held by the Spokane intercollegiate research and technology institute or the Washington technology center shall be assigned to innovate Washington.

(b) Any appropriations made to the Spokane intercollegiate research and technology institute or the Washington technology center shall, on August 1, 2011, be transferred and credited to innovate Washington.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make

a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the Spokane intercollegiate research and technology institute or the Washington technology center are transferred to the jurisdiction of innovate Washington. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to innovate Washington to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the Spokane intercollegiate research and technology institute or the Washington technology center shall be continued and acted upon by innovate Washington. All existing contracts and obligations shall remain in full force and shall be performed by innovate Washington.

(5) The transfer of the powers, duties, functions, and personnel of the Spokane intercollegiate research and technology institute and the Washington technology center shall not affect the validity of any act performed before August 1, 2011.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) All classified employees of the Spokane intercollegiate research and technology institute or the Washington technology center assigned to innovate Washington under this section whose positions are within an existing bargaining unit description at innovate Washington shall become a part of the existing bargaining unit at innovate Washington and shall be considered an appropriate inclusion or modification of the existing bargaining unit under the provisions of chapter 41.80 RCW. [2011 1st sp.s. c 14 § 17.]

43.333.901 Effective date—2011 1st sp.s. c 14. This act takes effect August 1, 2011. [2011 1st sp.s. c 14 § 21.]

Chapter 43.336 RCW

WASHINGTON TOURISM COMMISSION

Sections

- 43.336.020 Commission created—Composition—Terms—Executive director—Rule-making authority.
43.336.050 Tourism enterprise account.

43.336.020 Commission created—Composition—Terms—Executive director—Rule-making authority. (1) The Washington tourism commission is created.

(2) The commission shall be cochaired by the director of the department or the director's designee, and by an industry-member representative who is elected by the commission members.

(3) The commission shall have nineteen members. In appointing members, the governor shall endeavor to balance the geographic and demographic composition of the commission to include members with special expertise from tourism

organizations, local jurisdictions, and small businesses directly engaged in tourism-related activities. Before making appointments to the Washington tourism commission, the governor shall consider nominations from recognized organizations that represent the entities or interests identified in this section. Commission members shall be appointed by the governor as follows:

(a) Three members to represent the lodging industry, at least two of which shall be chosen from a list of three nominees per position submitted by the state's largest lodging industry trade association. Members should represent all property categories and different regions of the state;

(b) Three representatives from nonprofit destination marketing organizations or visitor and convention bureaus;

(c) Three industry representatives from the arts, entertainment, attractions, or recreation industry;

(d) Four private industry representatives, two from each of the business categories in this subsection:

(i) The food, beverage, and wine industries; and

(ii) The travel and transportation industries;

(e) Four legislative members, one from each major caucus of the senate, designated by the president of the senate, and one from each major caucus of the house of representatives, designated by the speaker of the house of representatives;

(f) The chair of the Washington convention and trade center; and

(g) The director or the director's designee.

(4)(a) Terms of nonlegislative members shall be three years, except that initial terms shall be staggered such that terms of one-third of the initial members shall expire each year.

(b) Terms of legislative members shall be two years.

(c) Vacancies shall be appointed in the same manner as the original appointment.

(d) A member appointed by the governor may not be absent from more than fifty percent of the regularly scheduled meetings in any one calendar year. Any member who exceeds this absence limitation is deemed to have withdrawn from the office and may be replaced by the governor.

(5) Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) The commission shall meet at least four times per year, but may meet more frequently as necessary.

(7) A majority of members currently appointed constitutes a quorum.

(8) Staff support shall be provided by the department, and staff shall report to the executive director.

(9) The director, in consultation with the commission, shall appoint an executive director.

(10) The commission may adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter.

(11) During the 2011-2013 fiscal biennium, the commission and its activities and responsibilities are suspended. [2011 1st sp. s. c 50 § 957; 2009 c 549 § 5178; 2007 c 228 § 102.]

Effective dates—2011 1st sp. s. c 50: See note following RCW 15.76.115.

43.336.050 Tourism enterprise account. The tourism enterprise account is created in the custody of the state treasurer.

(1) All receipts from RCW 43.336.030(2)(a) must be deposited into the account. Only the executive director or the executive director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Moneys transferred from the state convention and trade center account to this account shall be available for expenditure in accordance with the requirements of this section. As provided under subsection (3) of this section, moneys must be matched with private sector cash contributions, the value of an advertising equivalency contribution, or through an in-kind contribution. The commission shall determine criteria for what qualifies as an in-kind contribution. The moneys subject to match may be expended as private match is received or with evidence of qualified expenditure.

(3)(a) Twenty-five percent of the moneys transferred in fiscal year 2009 are subject to a match;

(b) Fifty percent of the moneys transferred in fiscal year 2010 are subject to a match; and

(c) One hundred percent of the moneys transferred in fiscal year 2011, and thereafter, are subject to a match.

(4) Expenditures from the account may be used by the department of commerce only for the purposes of expanding and promoting the tourism industry in the state of Washington.

(5) During the 2009-2011 fiscal biennium, the legislature may transfer from the tourism enterprise account to the state general fund such amounts as reflect the excess fund balance of the account. [2011 c 5 § 914; 2007 c 228 § 105.]

Effective date—2011 c 5: See note following RCW 43.79.487.

Chapter 43.340 RCW

TOBACCO SETTLEMENT AUTHORITY

Sections

43.340.050 Bonds. (*Effective July 1, 2013.*)

43.340.050 Bonds. (*Effective July 1, 2013.*) (1) The authority may issue its bonds in principal amounts which, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its purposes, the payment of debt service on its bonds, the establishment of reserves to secure the bonds, the costs of issuance of its bonds and credit enhancements, if any, and all other expenditures of the authority incident to and necessary to carry out its purposes or powers. The authority may also issue refunding bonds, including advance refunding bonds, for the purpose of refunding previously issued bonds, and may issue other types of bonds, debt obligations, and financing arrangements necessary to fulfill its purposes or the purposes of this chapter. The bonds are investment securities and negotiable instruments within the meaning of and for the purposes of the uniform commercial code.

(2) The authority's bonds shall bear such date or dates, mature at such time or times, be in such denominations, be in such form, be registered or registrable in such manner, be

made transferable, exchangeable, and interchangeable, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, bear such fixed or variable rate or rates of interest, be taxable or tax exempt, be payable at such time or times, and be sold in such manner and at such price or prices, as the authority determines. The bonds shall be executed by one or more officers of the authority, and by the trustee or paying agent if the authority determines to use a trustee or paying agent for the bonds. Execution of the bonds may be by manual or facsimile signature, provided that at least one signature on the bond is manual.

(3) The bonds of the authority shall be subject to such terms, conditions, covenants, and protective provisions as are found necessary or desirable by the authority, including, but not limited to, pledges of the authority's assets, setting aside of reserves, and other provisions the authority finds are necessary or desirable for the security of bondholders.

(4) Any revenue pledged by the authority to be received under the sales agreement or in special funds created by the authority shall be valid and binding at the time the pledge is made. Receipts so pledged and then or thereafter received by the authority and any securities in which such receipts may be invested shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind against the authority, whether such parties have notice of the lien. Notwithstanding any other provision to the contrary, the resolution or indenture of the authority or any other instrument by which a pledge is created need not be recorded or filed pursuant to chapter 62A.9A RCW to perfect such pledge. The authority shall constitute a governmental unit within the meaning of RCW 62A.9A-102.

(5) When issuing bonds, the authority may provide for the future issuance of additional bonds or parity debt on a parity with outstanding bonds, and the terms and conditions of their issuance. The authority may issue refunding bonds in accordance with chapter 39.53 RCW or issue bonds with a subordinate lien against the fund or funds securing outstanding bonds.

(6) The board and any person executing the bonds are not liable personally on the indebtedness or subject to any personal liability or accountability by reason of the issuance thereof.

(7) The authority may, out of any fund available therefor, purchase its bonds in the open market. [2011 c 74 § 702; 2002 c 365 § 8.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Chapter 43.350 RCW LIFE SCIENCES RESEARCH

Sections

43.350.070 Life sciences discovery fund.

43.350.070 Life sciences discovery fund. The life sciences discovery fund is created in the custody of the state treasurer. Only the board or the board's designee may authorize expenditures from the fund. Expenditures from the fund

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may be made only for purposes of this chapter. Administrative expenses of the authority, including staff support, may be paid only from the fund. Revenues to the fund consist of transfers made by the legislature from strategic contribution payments deposited in the tobacco settlement account under RCW 43.79.480, moneys received pursuant to contribution agreements entered into pursuant to RCW 43.350.030, moneys received from gifts, grants, and bequests, and interest earned on the fund. During the 2009-2011 fiscal biennium, the legislature may transfer to other state funds or accounts such amounts as represent the excess balance of the life sciences discovery fund. [2011 c 5 § 916; 2005 c 424 § 8.]

Effective date—2011 c 5: See note following RCW 43.79.487.

Chapter 43.372 RCW MARINE WATERS PLANNING AND MANAGEMENT

Sections

43.372.070 Marine resources stewardship trust account.

43.372.070 Marine resources stewardship trust account. (1) The marine resources stewardship trust account is created in the state treasury. All receipts from income derived from the investment of amounts credited to the account, any grants, gifts, or donations to the state for the purposes of marine management planning, marine spatial planning, data compilation, research, or monitoring, and any appropriations made to the account must be deposited in the account. Moneys in the account may be spent only after appropriation.

(2) Expenditures from the account may only be used for the purposes of marine management planning, marine spatial planning, research, monitoring, implementation of the marine management plan, and for the restoration or enhancement of marine habitat or resources.

(3) When moneys are deposited into the marine resources stewardship trust account, the governor must provide recommendations on expenditures from the account to the appropriate committees of the legislature prior to the next regular legislative session. The recommended projects and activities must be consistent with:

(a) The allowable uses of the marine resources stewardship trust account; and

(b) The priority areas identified in the west coast governors' agreement on ocean health, entered into on September 18, 2006, and recognized in section 1, chapter 250, Laws of 2011. [2011 c 250 § 2; 2010 c 145 § 10.]

Findings—2011 c 250: "(1) The legislature finds that the states of Washington, Oregon, and California have a common interest in the management and protection of ocean and coastal resources. This common interest stems from the many ocean and coastal resources that cross jurisdictional boundaries including winds, currents, fish, and wildlife, as well as the multi-jurisdictional reach of many uses of marine waters. These shared resources provide enormous economic, environmental, and social benefits to the states, and are an integral part of maintaining the high quality of life enjoyed by residents of the west coast.

(2) The legislature finds that the shared nature of ocean and coastal resources make coordination between the states of Washington, Oregon, and California essential in order to achieve effective ocean and coastal resource management and support sustainable coastal communities.

(3) The legislature recognizes the west coast governors' agreement on ocean health, entered into on September 18, 2006, as an important step

towards achieving more coordinated management of these ocean and coastal resources.

(4) Ocean and coastal resource planning processes and funding opportunities recently initiated by the federal government contemplate action at the regional level. Early action on the part of Washington, Oregon, and California to collaboratively define and implement such planning efforts and projects will increase the states' ability to determine the course of federal planning processes for the west coast and receive nonstate support for the planning efforts, resource preservation and restoration projects, and projects to support ocean health and sustainable coastal communities.

(5) Therefore, collaboration on ocean and coastal resource management between Washington, Oregon, and California should be continued and enhanced through the respective legislatures, as well as through the respective executive branches through the west coast governors' agreement on ocean health." [2011 c 250 § 1.]

Title 44

STATE GOVERNMENT—LEGISLATIVE

Chapters

- 44.05 Washington state redistricting act.
- 44.20 Session laws.
- 44.28 Joint legislative audit and review committee.
- 44.44 Office of state actuary—Select committee on pension policy.

Chapter 44.05 RCW

WASHINGTON STATE REDISTRICTING ACT

Sections

- 44.05.020 Definitions. (*Effective January 1, 2012.*)
- 44.05.080 Duties. (*Effective January 1, 2012.*)
- 44.05.110 Cessation of operations—Financial statement—Official record. (*Effective January 1, 2012.*)

44.05.020 Definitions. (*Effective January 1, 2012.*)

The definitions set forth in this section apply throughout this chapter, unless the context requires otherwise.

- (1) "Chief election officer" means the secretary of state.
- (2) "Federal census" means the decennial census required by federal law to be prepared by the United States bureau of the census in each year ending in zero.
- (3) "Lobbyist" means an individual required to register with the Washington public disclosure commission pursuant to RCW 42.17A.600.
- (4) "Plan" means a plan for legislative and congressional redistricting mandated by Article II, section 43 of the state Constitution. [2011 c 60 § 41; 1983 c 16 § 2.]

Effective date—2011 c 60: See RCW 42.17A.919.

44.05.080 Duties. (*Effective January 1, 2012.*) In addition to other duties prescribed by law, the commission shall:

- (1) Adopt rules pursuant to the Administrative Procedure Act, chapter 34.05 RCW, to carry out the provisions of Article II, section 43 of the state Constitution and of this chapter, which rules shall provide that three voting members of the commission constitute a quorum to do business, and that the votes of three of the voting members are required for any official action of the commission;
- (2) Act as the legislature's recipient of the final redistricting data and maps from the United States Bureau of the Census;

(3) Comply with requirements to disclose and preserve public records as specified in chapters 40.14 and 42.56 RCW;

(4) Hold open meetings pursuant to the open public meetings act, chapter 42.30 RCW;

(5) Prepare and disclose its minutes pursuant to RCW 42.32.030;

(6) Be subject to the provisions of RCW 42.17A.700;

(7) Prepare and publish a report with the plan; the report will be made available to the public at the time the plan is published. The report will include but will not be limited to: (a) The population and percentage deviation from the average district population for every district; (b) an explanation of the criteria used in developing the plan with a justification of any deviation in a district from the average district population; (c) a map of all the districts; and (d) the estimated cost incurred by the counties for adjusting precinct boundaries. [2011 c 60 § 42; 2005 c 274 § 303; 1983 c 16 § 8.]

Effective date—2011 c 60: See RCW 42.17A.919.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

44.05.110 Cessation of operations—Financial statement—Official record. (*Effective January 1, 2012.*)

(1) Following the period provided by RCW 44.05.100(1) for the commission's adoption of a plan, the commission shall take all necessary steps to conclude its business and cease operations. The commission shall prepare a financial statement disclosing all expenditures made by the commission. The official record shall contain all relevant information developed by the commission pursuant to carrying out its duties under this chapter, maps, data collected, minutes of meetings, written communications, and other information of a similar nature. Once the commission ceases to exist, the chief election officer shall be the custodian of the official record for purposes of reprecincting and election administration. The chief election officer shall provide for the permanent preservation of this official record pursuant to chapter 42.56 RCW and Title 40 RCW. Once the commission ceases to exist any budget surplus shall revert to the state general fund.

(2) Except as provided in RCW 44.05.120 for a reconvened commission, the commission shall cease to exist on July 1st of each year ending in two unless the supreme court extends the commission's term. [2011 c 60 § 43; 1983 c 16 § 11.]

Effective date—2011 c 60: See RCW 42.17A.919.

Chapter 44.20 RCW

SESSION LAWS

Sections

- 44.20.050 Publication of session laws—Headings, index.

44.20.050 Publication of session laws—Headings, index. When all of the acts of any session of the legislature and initiative measures enacted by the people since the next preceding session have been certified to the statute law committee, the code reviser employed by the statute law committee shall make the proper headings and index of such acts or laws and, after such work has been completed, the statute law committee shall have published on the code reviser or legis-

lative web site within seventy-five days after final adjournment of the legislature for that year and publish as many paper sets as deemed necessary by the committee of such acts and laws, with such headings and indexes, and such other matter as may be deemed essential, including a title page showing the session at which such acts were passed, the date of convening and adjournment of the session, and any other matter deemed proper, including a certificate by the secretary of state of such referendum measures as may have been enacted by the people since the next preceding session. [2011 c 156 § 6; 2006 c 46 § 2; 1982 1st ex.s. c 32 § 4; 1969 c 6 § 4; 1951 c 157 § 18; 1915 c 27 § 1; 1907 c 136 § 5; RRS § 8200.]

Purpose—Finding—Intent—2011 c 156: See note following RCW 1.08.080.

Chapter 44.28 RCW

JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE

Sections

44.28.816 Tuition-setting authority—Systemic performance audit.
(Expires December 31, 2018.)

Evaluation of opportunity scholarship and opportunity expansion programs:
RCW 28B.145.080.

44.28.816 Tuition-setting authority—Systemic performance audit. (Expires December 31, 2018.) (1) During calendar year 2018, the joint committee shall complete a systemic performance audit of the tuition-setting authority in RCW 28B.15.067 granted to the governing boards of the state universities, regional universities, and The Evergreen State College. The audit must include a separate analysis of both the authority granted in RCW 28B.15.067(3) and the authority in RCW 28B.15.067(4). The purpose of the audit is to evaluate the impact of institutional tuition-setting authority on student access, affordability, and institutional quality.

(2) The audit must include an evaluation of the following outcomes for each four-year institution of higher education:

(a) Changes in undergraduate enrollment, retention, and graduation by race and ethnicity, gender, state and county of origin, age, and socioeconomic status;

(b) The impact on student transferability, particularly from Washington community and technical colleges;

(c) Changes in time and credits to degree;

(d) Changes in the number and availability of online programs and undergraduate enrollments in the programs;

(e) Changes in enrollments in the running start and other dual enrollment programs;

(f) Impacts on funding levels for state student financial aid programs;

(g) Any changes in the percent of students who apply for student financial aid using the free application for federal student aid (FAFSA);

(h) Any changes in the percent of students who apply for available tax credits;

(i) Information on the use of building fee revenue by fiscal or academic year; and

(j) Undergraduate tuition and fee rates compared to undergraduate tuition and fee rates at similar institutions in the global challenge states.

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(3) The audit must include recommendations on whether to continue tuition-setting authority beyond the 2018-19 academic year.

(4) In conducting the audit, the auditor shall solicit input from key higher education stakeholders, including but not limited to students and their families, faculty, and staff. To the maximum extent possible, data for the University of Washington and Washington State University shall be disaggregated by branch campus.

(5) The auditor shall report findings and recommendations to the appropriate committees of the legislature by December 15, 2018.

(6) This section expires December 31, 2018. [2011 1st sp.s. c 10 § 31.]

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

Chapter 44.44 RCW

OFFICE OF STATE ACTUARY—SELECT COMMITTEE ON PENSION POLICY

Sections

44.44.040 Powers and duties—Actuarial fiscal notes.

44.44.040 Powers and duties—Actuarial fiscal notes.

The office of the state actuary shall have the following powers and duties:

(1) Perform all actuarial services for the department of retirement systems, including all studies required by law.

(2) Advise the legislature and the governor regarding pension benefit provisions, and funding policies and investment policies of the state investment board.

(3) Consult with the legislature and the governor concerning determination of actuarial assumptions used by the department of retirement systems.

(4) Prepare a report, to be known as the actuarial fiscal note, on each pension bill introduced in the legislature which briefly explains the financial impact of the bill. The actuarial fiscal note shall include: (a) The statutorily required contribution for the biennium and the following twenty-five years; (b) the biennial cost of the increased benefits if these exceed the required contribution; and (c) any change in the present value of the unfunded accrued benefits. An actuarial fiscal note shall also be prepared for all amendments which are offered in committee or on the floor of the house of representatives or the senate to any pension bill. However, a majority of the members present may suspend the requirement for an actuarial fiscal note for amendments offered on the floor of the house of representatives or the senate.

(5) Provide such actuarial services to the legislature as may be requested from time to time.

(6) Provide staff and assistance to the committee established under RCW 41.04.276.

(7) Provide actuarial assistance to the law enforcement officers' and firefighters' plan 2 retirement board as provided in chapter 2, Laws of 2003. Reimbursement for services shall be made to the state actuary under RCW 39.34.130 and section 5(5), chapter 2, Laws of 2003.

(8) Provide actuarial assistance to the committee on advanced tuition payment pursuant to chapter 28B.95 RCW,

including recommending a tuition unit price to the committee on advanced tuition payment to be used in the ensuing enrollment period. Reimbursement for services shall be made to the state actuary under RCW 39.34.130. [2011 1st sp.s. c 12 § 7. Prior: 2003 c 295 § 4; 2003 c 92 § 2; 1987 c 25 § 3; 1986 c 317 § 6; 1975-'76 2nd ex.s. c 105 § 22.]

Severability—Effective date—2003 c 92: See RCW 41.26.905 and 41.26.906.

Legislative findings—Intent—Severability—1986 c 317: See notes following RCW 41.40.150.

Title 46

MOTOR VEHICLES

Chapters

- 46.01 Department of licensing.
- 46.04 Definitions.
- 46.09 Off-road and nonhighway vehicles.
- 46.10 Snowmobiles.
- 46.12 Certificates of title.
- 46.16 Vehicle licenses.
- 46.16A Registration.
- 46.17 Vehicle fees.
- 46.18 Special license plates.
- 46.19 Special parking privileges for persons with disabilities.
- 46.20 Drivers' licenses—Identical cards.
- 46.25 Uniform commercial driver's license act.
- 46.30 Mandatory liability insurance.
- 46.32 Vehicle inspection.
- 46.37 Vehicle lighting and other equipment.
- 46.44 Size, weight, load.
- 46.55 Towing and impoundment.
- 46.61 Rules of the road.
- 46.63 Disposition of traffic infractions.
- 46.66 Washington auto theft prevention authority.
- 46.68 Disposition of revenue.
- 46.70 Dealers and manufacturers.
- 46.71 Automotive repair.
- 46.72 Transportation of passengers in for hire vehicles.
- 46.72A Limousines.
- 46.82 Driver training schools.
- 46.83 Traffic schools.
- 46.85 Reciprocal or proportional registration of vehicles.
- 46.87 Proportional registration.
- 46.93 Motorsports vehicles—Dealer and manufacturer franchises.

Chapter 46.01 RCW

DEPARTMENT OF LICENSING

Sections

- 46.01.040 Powers, duties, and functions relating to motor vehicle laws vested in department.
- 46.01.140 County auditors, agents, and subagents—Powers and duties—Standard contracts—Rules.
- 46.01.315 Immunity of director, the state, licensed driver training schools, and school districts in administering knowledge and driving portions of driver licensing examination.

46.01.040 Powers, duties, and functions relating to motor vehicle laws vested in department. The department

is vested with all powers, functions, and duties with respect to and including the following:

- (1) The motor vehicle fuel excise tax as provided in chapter 82.36 RCW;
- (2) The special fuel tax as provided in chapter 82.38 RCW;
- (3) The motor vehicle excise tax as provided in chapter 82.44 RCW;
- (4) The travel trailers and campers excise tax as provided in chapter 82.50 RCW;
- (5) All general powers and duties relating to motor vehicles as provided in chapter 46.08 RCW;
- (6) Certificates of title and registration certificates as provided in chapters 46.12 and 46.16A RCW;
- (7) The registration of motor vehicles as provided in chapter 46.16A RCW;
- (8) Dealers' licenses as provided in chapter 46.70 RCW;
- (9) The licensing of motor vehicle transporters as provided in chapter 46.76 RCW;
- (10) The licensing of vehicle wreckers as provided in chapter 46.80 RCW;
- (11) The administration of the laws relating to reciprocal or proportional registration of motor vehicles as provided in chapter 46.85 RCW;
- (12) The licensing of passenger vehicles for hire as provided in chapter 46.72 RCW;
- (13) Drivers' licenses as provided in chapter 46.20 RCW;
- (14) Commercial driver training schools as provided in chapter 46.82 RCW;
- (15) Financial responsibility as provided in chapter 46.29 RCW;
- (16) Accident reporting as provided in chapter 46.52 RCW;
- (17) Disposition of revenues as provided in chapter 46.68 RCW; and
- (18) The administration of all other laws relating to motor vehicles vested in the director of licenses on June 30, 1965. [2011 c 171 § 10; 2010 c 161 § 1108; 1983 c 3 § 117; 1979 c 158 § 115; 1965 c 156 § 4.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.01.140 County auditors, agents, and subagents—Powers and duties—Standard contracts—Rules. (1) **County auditor/agent duties.** A county auditor or other agent appointed by the director shall:

- (a) Enter into a standard contract provided by the director;
- (b) Provide all services authorized by the director for vehicle certificates of title and vehicle registration applications and issuance under the direction and supervision of the director including, but not limited to:
 - (i) Processing reports of sale;
 - (ii) Processing transitional ownership transactions;
 - (iii) Processing mail-in vehicle registration renewals until directed otherwise by legislative authority;

(iv) Issuing registrations and temporary ORV use permits for off-road vehicles as required under chapter 46.09 RCW;

(v) Issuing registrations for snowmobiles as required under chapter 46.10 RCW; and

(vi) Collecting fees and taxes as required.

(2) **County auditor/agent assistants and subagents.** A county auditor or other agent appointed by the director may, with approval of the director:

(a) Appoint assistants as special deputies to accept applications for vehicle certificates of title and to issue vehicle registrations; and

(b) Recommend and request that the director appoint subagencies within the county to accept applications for vehicle certificates of title and vehicle registration application issuance.

(3) **Appointing subagents.** A county auditor or other agent appointed by the director who requests a subagency shall, with approval of the director:

(a) Use an open competitive process including, but not limited to, a written business proposal and oral interview to determine the qualifications of all interested applicants; and

(b) Submit all proposals to the director with a recommendation for appointment of one or more subagents who have applied through the open competitive process. If a qualified successor who is an existing subagent's sibling, spouse, or child, or a subagency employee has applied, the county auditor shall provide the name of the qualified successor and the name of one other applicant who is qualified and was chosen through the open competitive process.

(4) **Subagent duties.** A subagent appointed by the director shall:

(a) Enter into a standard contract with the county auditor or agent provided by the director; and

(b) Provide all services authorized by the director for vehicle certificates of title and vehicle registration applications and issuance under the direction and supervision of the county auditor or agent and the director including, but not limited to:

(i) Processing reports of sale;

(ii) Processing transitional ownership transactions;

(iii) Mailing out vehicle registrations and replacement plates to internet payment option customers until directed otherwise by legislative authority;

(iv) Issuing registrations and temporary ORV use permits for off-road vehicles as required under chapter 46.09 RCW;

(v) Issuing registrations for snowmobiles as required under chapter 46.10 RCW; and

(vi) Collecting fees and taxes as required.

(5) **Subagent successorship.** A subagent appointed by the director who no longer wants his or her appointment may recommend a successor who is the subagent's sibling, spouse, or child, or a subagency employee. The recommended successor must participate in the open competitive process used to select an applicant. In making successor recommendations and appointment determinations, the following provisions apply:

(a) If a subagency is held by a partnership or corporate entity, the nomination must be submitted on behalf of, and agreed to by, all partners or corporate officers;

(b) A subagent may not receive any direct or indirect compensation or remuneration from any party or entity in recognition of a successor nomination. A subagent may not receive any financial benefit from the transfer or termination of an appointment; and

(c) The appointment of a successor is intended to assist in the efficient transfer of appointments to minimize public inconvenience. The appointment of a successor does not create a proprietary or property interest in the appointment.

(6) **Standard contracts.** The standard contracts provided by the director in this section may include provisions that the director deems necessary to ensure that readily accessible and acceptable service is provided to the citizens of the state, including the full collection of fees and taxes. The standard contracts must include provisions that:

(a) Describe responsibilities and liabilities of each party related to service expectations and levels;

(b) Describe the equipment to be supplied by the department and equipment maintenance;

(c) Require specific types of insurance or bonds, or both, to protect the state against any loss of collected revenue or loss of equipment;

(d) Specify the amount of training that will be provided by each of the parties;

(e) Describe allowable costs that may be charged for vehicle registration activities as described in subsection (7) of this section; and

(f) Describe causes and procedures for termination of the contract, which may include mediation and binding arbitration.

(7) **County auditor/agent cost reimbursement.** A county auditor or other agent appointed by the director who does not cover expenses for services provided by the standard contract may submit to the department a request for cost-coverage moneys. The request must be submitted on a form developed by the department. The department shall develop procedures to standardize and identify allowable costs and to verify whether a request is reasonable. Payment must be made on those requests found to be allowable from the licensing services account.

(8) **County auditor/agent revenue disbursement.** County revenues that exceed the cost of providing services described in the standard contract, calculated in accordance with the procedures in subsection (7) of this section, must be expended as determined by the county legislative authority during the process established by law for adoption of county budgets.

(9) **Appointment authority.** The director has final appointment authority for county auditors or other agents or subagents.

(10) **Rules.** The director may adopt rules to implement this section. [2011 c 171 § 11. Prior: 2010 1st sp.s. c 7 § 139; 2010 c 221 § 1; 2010 c 161 § 204; 2005 c 343 § 1; 2003 c 370 § 3; 2001 c 331 § 1; 1996 c 315 § 1; 1992 c 216 § 1; 1991 c 339 § 16; 1990 c 250 § 89; 1988 c 12 § 1; 1987 c 302 § 1; 1985 c 380 § 12; prior: 1983 c 77 § 1; 1983 c 26 § 1; 1980 c 114 § 2; 1979 c 158 § 122; 1975 1st ex.s. c 146 § 1; 1973 c 103 § 1; 1971 ex.s. c 231 § 9; 1971 ex.s. c 91 § 3; 1965 c 156 § 14; 1963 c 85 § 1; 1961 c 12 § 46.08.100; prior: 1955 c 89 § 3; 1937 c 188 § 27; RRS § 6312-27. Formerly RCW 46.08.100.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Application—2003 c 370: "Sections 2 and 3 of this act take effect for renewals that are due or become due on or after November 1, 2003." [2003 c 370 § 6.] Section 2 of this act was vetoed by the governor.

Additional notes found at www.leg.wa.gov

46.01.315 Immunity of director, the state, licensed driver training schools, and school districts in administering knowledge and driving portions of driver licensing examination. A civil suit or action may not be commenced or prosecuted against the director, the state of Washington, any driver training school licensed by the department, any other government officer or entity, including a school district or an employee of a school district, or against any other person, by reason of any act done or omitted to be done in connection with administering the portions of the driver licensing examination that test the applicant's knowledge of traffic laws and ability to safely operate a motor vehicle. This section does not bar the state of Washington or the director from bringing any action, whether civil or criminal, against any driver training school licensed by the department. [2011 c 370 § 3.]

Intent—2011 c 370: See note following RCW 28A.220.030.

Inclusion of stakeholder groups in communications to facilitate transition of driver licensing examination administration—2011 c 370: See note following RCW 46.82.450.

Chapter 46.04 RCW DEFINITIONS

Sections

46.04.161	Custom vehicle.
46.04.1945	Golf cart.
46.04.1951	Gonzaga University alumni association license plates.
46.04.1961	Repealed.
46.04.249	Keep Kids Safe license plates.
46.04.265	Law enforcement memorial license plates.
46.04.3551	Music Matters license plates. (<i>Effective January 1, 2012.</i>)
46.04.363	Off-road motorcycle. (<i>Effective January 1, 2012.</i>)
46.04.3815	Parts car.
46.04.391	Recodified as RCW 46.04.4141.
46.04.4141	Police officer.
46.04.429	Professional firefighters and paramedics license plates.
46.04.437	Purple heart license plates.
46.04.571	Repealed.
46.04.572	Street rod vehicle.
46.04.62260	Ski & Ride Washington license plates.
46.04.670	Vehicle.
46.04.671	Vehicle license fee.
46.04.691	Washington Lighthouses license plates.
46.04.692	Washington's National Park Fund license plates.
46.04.705	We love our pets license plates.
46.04.7051	Repealed.

46.04.161 Custom vehicle. "Custom vehicle" means any motor vehicle that:

(1) Is at least thirty years old and of a model year after 1948 or was manufactured to resemble a vehicle at least thirty years old and of a model year after 1948; and

(2) Has alterations to one or more of the major component parts listed in RCW 46.80.010 that change the appear-

ance or performance of the vehicle from the original manufacturer's design or has a body constructed from nonoriginal materials. [2011 c 114 § 3.]

Effective date—2011 c 114: See note following RCW 46.04.572.

46.04.1945 Golf cart. "Golf cart" means a gas-powered or electric-powered four-wheeled vehicle originally designed and manufactured for operation on a golf course for sporting purposes and has a speed attainable in one mile of not more than twenty miles per hour. A golf cart is not a nonhighway vehicle or off-road vehicle as defined in RCW 46.04.365. [2011 c 171 § 12; 2010 c 217 § 3.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.04.1951 Gonzaga University alumni association license plates. "Gonzaga University alumni association license plates" means license plates issued under RCW 46.18.200 that display a symbol or artwork recognizing the efforts of the Gonzaga University alumni association in Washington state. [2011 c 171 § 13; 2005 c 85 § 2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.04.1961 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

46.04.249 Keep Kids Safe license plates. "Keep Kids Safe license plates" means license plates issued under RCW 46.18.200 that display artwork recognizing efforts to prevent child abuse and neglect in Washington state. [2011 c 171 § 14; 2005 c 53 § 2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.04.265 Law enforcement memorial license plates. "Law enforcement memorial license plates" means license plates issued under RCW 46.18.200 that display a symbol honoring law enforcement officers in Washington killed in the line of duty. [2011 c 171 § 15; 2004 c 221 § 2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.04.3551 Music Matters license plates. (*Effective January 1, 2012.*) "Music Matters license plates" means special license plates issued under RCW 46.18.200 that display the "Music Matters" logo. [2011 c 229 § 2.]

Effective date—2011 c 229: See note following RCW 46.18.200.

46.04.363 Off-road motorcycle. (*Effective January 1, 2012.*) "Off-road motorcycle" means a motorcycle as defined in RCW 46.04.330 that is labeled by the manufacturer's statement or certificate of origin as intended for "off-road use only" or a similar message stamped into the frame of the motorcycle, contained in the owner's manual, or affixed to any part of the motorcycle. [2011 c 121 § 1.]

Effective date—2011 c 121: "This act takes effect January 1, 2012." [2011 c 121 § 5.]

46.04.3815 Parts car.

Reviser's note: RCW 46.01.3815 was amended by 2011 c 171 § 16 without reference to its repeal by 2011 c 114 § 10. It has been decodified for publication purposes under RCW 1.12.025.

46.04.391 Recodified as RCW 46.04.4141. See Supplementary Table of Disposition of Former RCW Sections, this volume.

46.04.4141 Police officer. Police officer means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations. [1965 ex.s. c 155 § 89. Formerly RCW 46.04.391.]

46.04.429 Professional firefighters and paramedics license plates. "Professional firefighters and paramedics license plates" means license plates issued under RCW 46.18.200 that display a symbol denoting professional firefighters and paramedics. [2011 c 171 § 17; 2004 c 35 § 2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.04.437 Purple heart license plates. "Purple heart license plates" means special license plates that may be assigned to a motor vehicle required to display one or two license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department, to recipients of the Purple Heart medal or to another qualified person. [2011 c 332 § 2; 2010 c 161 § 133.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.04.571 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

46.04.572 Street rod vehicle. "Street rod vehicle" means a motor vehicle that:

(1) Is a 1948 or older vehicle or the vehicle was manufactured after 1948 to resemble a vehicle manufactured before 1949; and

(2) Has alterations to one or more of the major component parts listed in RCW 46.80.010 that change the appearance or performance of the vehicle from the original manufacturer's design or has a body constructed from nonoriginal materials. [2011 c 114 § 1.]

Effective date—2011 c 114: "This act takes effect October 1, 2011." [2011 c 114 § 11.]

46.04.62260 Ski & Ride Washington license plates. "Ski & Ride Washington license plates" means license plates issued under RCW 46.18.200 that display a symbol or artwork recognizing the efforts of the Washington snowsports industry in this state. [2011 c 171 § 18; 2005 c 220 § 2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.04.670 Vehicle. "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, including bicycles. "Vehicle" does not include power wheelchairs or devices other than

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bicycles moved by human or animal power or used exclusively upon stationary rails or tracks. Mopeds are not considered vehicles or motor vehicles for the purposes of chapter 46.70 RCW. Bicycles are not considered vehicles for the purposes of chapter 46.12, 46.16A, or 46.70 RCW or RCW 82.12.045. Electric personal assistive mobility devices are not considered vehicles or motor vehicles for the purposes of chapter 46.12, 46.16A, 46.29, 46.37, or 46.70 RCW. A golf cart is not considered a vehicle, except for the purposes of chapter 46.61 RCW. [2011 c 171 § 19. Prior: 2010 c 217 § 2; 2010 c 161 § 155; 2003 c 141 § 6; 2002 c 247 § 5; 1994 c 262 § 2; 1991 c 214 § 2; 1979 ex.s. c 213 § 4; 1961 c 12 § 46.04.670; prior: 1959 c 49 § 72; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Legislative review—2002 c 247: See note following RCW 46.04.1695.

Mopeds

helmet required: RCW 46.37.530, 46.37.535.

motorcycle endorsement, exemption: RCW 46.20.500.

operation and safety standards: RCW 46.61.710, 46.61.720.

registration: RCW 46.16A.405(2), 46.17.350(1)(f).

46.04.671 Vehicle license fee. "Vehicle license fee" means a fee collected by the state of Washington as a license fee, as that term is construed in Article II, section 40 of the state Constitution, for the act of registering a vehicle under chapter 46.16A RCW. "Vehicle license fee" does not include license plate fees, or taxes and fees collected by the department for other jurisdictions. [2011 c 171 § 20; 2010 c 161 § 156.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.04.691 Washington Lighthouses license plates. "Washington Lighthouses license plates" means license plates issued under RCW 46.18.200 that display a symbol or artwork recognizing the efforts of lighthouse environmental programs in Washington state. [2011 c 171 § 21; 2005 c 48 § 2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.04.692 Washington's National Park Fund license plates. "Washington's National Park Fund license plates" means license plates issued under RCW 46.18.200 that display a symbol or artwork recognizing the efforts of Washington's National Park Fund in preserving Washington's national parks for future generations in Washington state. [2011 c 171 § 22; 2005 c 177 § 2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.04.705 We love our pets license plates. "We love our pets license plates" means license plates issued under RCW 46.18.200 that display a symbol or artwork recognizing the efforts of the Washington state federation of animal care and control agencies in Washington state that assists local member agencies of the federation to promote and perform spay/neuter surgery of Washington state pets, in order to reduce pet overpopulation. [2011 c 171 § 23; 2005 c 71 § 2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.04.7051 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 46.09 RCW

OFF-ROAD AND NONHIGHWAY VEHICLES

Sections

46.09.320	Certificates of title.
46.09.400	Issuance—Decals—Fees.
46.09.420	Registrations and decals—Exemptions.
46.09.450	Authorized and prohibited uses.
46.09.470	Operating violations—Exceptions. (<i>Effective until January 1, 2012.</i>)
46.09.470	Operating violations—Exceptions. (<i>Effective January 1, 2012.</i>)
46.09.490	General penalty—Civil liability.

46.09.320 Certificates of title. The department shall issue a certificate of title to the owner of an off-road vehicle. The owner shall pay the fee established under RCW 46.17.100. Issuance of the certificate of title does not qualify the vehicle for registration under chapter 46.16A RCW. [2011 c 171 § 24; 2010 c 161 § 214.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.09.400 Issuance—Decals—Fees. The department shall:

(1) Issue registrations and temporary ORV use permits for off-road vehicles;

(2) Issue decals for off-road vehicles. The decals serve the same function as license plates for vehicles registered under chapter 46.16A RCW; and

(3) Charge a fee for each decal covering the actual cost of the decal. [2011 c 171 § 25; 2010 c 161 § 215; 1990 c 250 § 23; 1986 c 206 § 2; 1977 ex.s. c 220 § 2; 1972 ex.s. c 153 § 4; 1971 ex.s. c 47 § 8. Formerly RCW 46.09.030.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

Additional notes found at www.leg.wa.gov

46.09.420 Registrations and decals—Exemptions. ORV registrations and decals are required under this chapter except for the following:

(1) Off-road vehicles owned and operated by the United States, another state, or a political subdivision of the United States or another state.

(2) Off-road vehicles owned and operated by this state, a municipality, or a political subdivision of this state or the municipality.

(3) Off-road vehicles operated on agricultural lands owned or leased by the off-road vehicle owner or operator.

(4) Off-road vehicles owned by a resident of another state that have a valid ORV use permit or vehicle registration issued in accordance with the laws of the other state. This exemption applies only to the extent that a similar exemption or privilege is granted under the laws of that state.

(5) Off-road vehicles while being used for search and rescue purposes under the authority or direction of an appropriate search and rescue or law enforcement agency.

(6) Vehicles registered under chapter 46.16A RCW or, in the case of nonresidents, vehicles validly registered for operation over public highways in the jurisdiction of the owner's residence. [2011 c 171 § 26; 2010 c 161 § 217; 2004 c 105 § 9; 1986 c 206 § 3; 1977 ex.s. c 220 § 4; 1972 ex.s. c 153 § 6; 1971 ex.s. c 47 § 10. Formerly RCW 46.09.050.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

Additional notes found at www.leg.wa.gov

46.09.450 Authorized and prohibited uses. (1) Except as otherwise provided in this section, it is lawful to operate an off-road vehicle upon:

(a) A nonhighway road and in parking areas serving designated off-road vehicle areas if the state, federal, local, or private authority responsible for the management of the nonhighway road authorizes the use of off-road vehicles; and

(b) A street, road, or highway as authorized under RCW 46.09.360.

(2) Operations of an off-road vehicle on a nonhighway road, or on a street, road, or highway as authorized under RCW 46.09.360, under this section is exempt from registration requirements of chapter 46.16A RCW and vehicle lighting and equipment requirements of chapter 46.37 RCW.

(3) It is unlawful to operate an off-road vehicle upon a private nonhighway road if the road owner has not authorized the use of off-road vehicles.

(4) Nothing in this section authorizes trespass on private property.

(5) The provisions of RCW 4.24.210(5) shall apply to public landowners who allow members of the public to use public facilities accessed by a highway, street, or nonhighway road for recreational off-road vehicle use. [2011 c 171 § 27; 2010 c 161 § 221; 2006 c 212 § 2; 2005 c 213 § 4. Formerly RCW 46.09.115.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Findings—Construction—Effective date—2005 c 213: See notes following RCW 46.09.300.

46.09.470 Operating violations—Exceptions. (Effective until January 1, 2012.) (1) Except as provided in subsection (4) of this section, it is a traffic infraction for any person to operate any nonhighway vehicle:

(a) In such a manner as to endanger the property of another;

(b) On lands not owned by the operator or owner of the nonhighway vehicle without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others regardless of ownership;

(c) On lands not owned by the operator or owner of the nonhighway vehicle without an adequate braking device or when otherwise required for the safety of others regardless of ownership;

(d) Without a spark arrester approved by the department of natural resources;

(e) Without an adequate, and operating, muffling device which effectively limits vehicle noise to no more than eighty-six decibels on the "A" scale at fifty feet as measured by the Society of Automotive Engineers (SAE) test procedure J 331a, except that a maximum noise level of one hundred and five decibels on the "A" scale at a distance of twenty inches from the exhaust outlet shall be an acceptable substitute in lieu of the Society of Automotive Engineers test procedure J 331a when measured:

(i) At a forty-five degree angle at a distance of twenty inches from the exhaust outlet;

(ii) With the vehicle stationary and the engine running at a steady speed equal to one-half of the manufacturer's maximum allowable ("red line") engine speed or where the manufacturer's maximum allowable engine speed is not known the test speed in revolutions per minute calculated as sixty percent of the speed at which maximum horsepower is developed; and

(iii) With the microphone placed ten inches from the side of the vehicle, one-half way between the lowest part of the vehicle body and the ground plane, and in the same lateral plane as the rearmost exhaust outlet where the outlet of the exhaust pipe is under the vehicle;

(f) On lands not owned by the operator or owner of the nonhighway vehicle upon the shoulder or inside bank or slope of any nonhighway road or highway, or upon the median of any divided highway;

(g) On lands not owned by the operator or owner of the nonhighway vehicle in any area or in such a manner so as to unreasonably expose the underlying soil, or to create an erosion condition, or to injure, damage, or destroy trees, growing crops, or other vegetation;

(h) On lands not owned by the operator or owner of the nonhighway vehicle or on any nonhighway road or trail, when these are restricted to pedestrian or animal travel;

(i) On any public lands in violation of rules and regulations of the agency administering such lands; and

(j) On a private nonhighway road in violation of RCW 46.09.450(3).

(2) It is a misdemeanor for any person to operate any nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance.

(3)(a) Except for an off-road vehicle equipped with seat belts and roll bars or an enclosed passenger compartment, it is a traffic infraction for any person to operate or ride an off-road vehicle on a nonhighway road without wearing upon his or her head a motorcycle helmet fastened securely while in motion. For purposes of this section, "motorcycle helmet" has the same meaning as provided in RCW 46.37.530.

(b) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on his or her own land.

(c) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on agricultural lands owned or leased by the off-road vehicle operator or the operator's employer.

(4) It is not a traffic infraction to operate an off-road vehicle on a street, road, or highway as authorized under RCW 46.09.360. [2011 c 171 § 28; 2006 c 212 § 3; 2005 c 213 § 3; 2003 c 377 § 1; 1979 ex.s. c 136 § 41; 1977 ex.s. c 220 § 10; 1972 ex.s. c 153 § 12; 1971 ex.s. c 47 § 17. Formerly RCW 46.09.120.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—Construction—Effective date—2005 c 213: See notes following RCW 46.09.300.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

Additional notes found at www.leg.wa.gov

46.09.470 Operating violations—Exceptions. (Effective January 1, 2012.) (1) Except as provided in subsection (4) of this section, it is a traffic infraction for any person to operate any nonhighway vehicle:

(a) In such a manner as to endanger the property of another;

(b) On lands not owned by the operator or owner of the nonhighway vehicle without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others regardless of ownership;

(c) On lands not owned by the operator or owner of the nonhighway vehicle without an adequate braking device or when otherwise required for the safety of others regardless of ownership;

(d) Without a spark arrester approved by the department of natural resources;

(e) Without an adequate, and operating, muffling device which effectively limits vehicle noise to no more than eighty-six decibels on the "A" scale at fifty feet as measured by the Society of Automotive Engineers (SAE) test procedure J 331a, except that a maximum noise level of one hundred and five decibels on the "A" scale at a distance of twenty inches from the exhaust outlet shall be an acceptable substitute in lieu of the Society of Automotive Engineers test procedure J 331a when measured:

(i) At a forty-five degree angle at a distance of twenty inches from the exhaust outlet;

(ii) With the vehicle stationary and the engine running at a steady speed equal to one-half of the manufacturer's maximum allowable ("red line") engine speed or where the manufacturer's maximum allowable engine speed is not known the test speed in revolutions per minute calculated as sixty per-

cent of the speed at which maximum horsepower is developed; and

(iii) With the microphone placed ten inches from the side of the vehicle, one-half way between the lowest part of the vehicle body and the ground plane, and in the same lateral plane as the rearmost exhaust outlet where the outlet of the exhaust pipe is under the vehicle;

(f) On lands not owned by the operator or owner of the nonhighway vehicle upon the shoulder or inside bank or slope of any nonhighway road or highway, or upon the median of any divided highway;

(g) On lands not owned by the operator or owner of the nonhighway vehicle in any area or in such a manner so as to unreasonably expose the underlying soil, or to create an erosion condition, or to injure, damage, or destroy trees, growing crops, or other vegetation;

(h) On lands not owned by the operator or owner of the nonhighway vehicle or on any nonhighway road or trail, when these are restricted to pedestrian or animal travel;

(i) On any public lands in violation of rules and regulations of the agency administering such lands; and

(j) On a private nonhighway road in violation of RCW 46.09.450(3).

(2) It is a misdemeanor for any person to operate any nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance.

(3)(a) Except for an off-road vehicle equipped with seat belts and roll bars or an enclosed passenger compartment, it is a traffic infraction for any person to operate or ride an off-road vehicle on a nonhighway road without wearing upon his or her head a motorcycle helmet fastened securely while in motion. For purposes of this section, "motorcycle helmet" has the same meaning as provided in RCW 46.37.530.

(b) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on his or her own land.

(c) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on agricultural lands owned or leased by the off-road vehicle operator or the operator's employer.

(4) It is not a traffic infraction to operate an off-road vehicle on a street, road, or highway as authorized under RCW 46.09.360 or 46.61.705. [2011 c 171 § 28; 2011 c 121 § 4; 2006 c 212 § 3; 2005 c 213 § 3; 2003 c 377 § 1; 1979 ex.s. c 136 § 41; 1977 ex.s. c 220 § 10; 1972 ex.s. c 153 § 12; 1971 ex.s. c 47 § 17. Formerly RCW 46.09.120.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Reviser's note: This section was amended by 2011 c 121 § 4 and by 2011 c 171 § 28, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—2011 c 121: See note following RCW 46.04.363.

Findings—Construction—Effective date—2005 c 213: See notes following RCW 46.09.300.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

Additional notes found at www.leg.wa.gov

46.09.490 General penalty—Civil liability. (1) Except as provided in RCW 46.09.470(2) and 46.09.480 as now or

hereafter amended, violation of the provisions of this chapter is a traffic infraction for which a penalty of not less than twenty-five dollars may be imposed.

(2) In addition to the penalties provided in subsection (1) of this section, the owner and/or the operator of any nonhighway vehicle shall be liable for any damage to property including damage to trees, shrubs, or growing crops injured as the result of travel by the nonhighway vehicle. The owner of such property may recover from the person responsible three times the amount of damage. [2011 c 171 § 29; 1979 ex.s. c 136 § 42; 1977 ex.s. c 220 § 16; 1972 ex.s. c 153 § 16; 1971 ex.s. c 47 § 24. Formerly RCW 46.09.190.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

Additional notes found at www.leg.wa.gov

Chapter 46.10 RCW SNOWMOBILES

Sections

46.10.405	Repealed.
46.10.440	Decals—Affixing and displaying dealer license plates.
46.10.470	Operating upon public road or highway lawful, when.
46.10.490	Operating violations.
46.10.500	Violations as traffic infractions—Exceptions—Civil liability.
46.10.510	Refund of snowmobile fuel tax to snowmobile account.

46.10.405 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

46.10.440 Decals—Affixing and displaying dealer license plates. (1) Snowmobile decals assigned to each snowmobile must be:

(a) Permanently affixed to and displayed upon each snowmobile as provided by rules adopted by the department; and

(b) Maintained in a legible condition.

(2) Dealer license plates as provided for in RCW 46.10.420 may be temporarily affixed.

(3) The department shall make available a pair of identical snowmobile decals consistent with subsection (1) of this section. The decals serve the same function as license plates for vehicles registered under chapter 46.16A RCW. The department shall charge each applicant for an original registration the actual cost of the snowmobile decal. The department shall make available replacement snowmobile decals for a fee equivalent to the actual cost of the snowmobile decals. [2011 c 171 § 30; 2010 c 161 § 234; 1973 1st ex.s. c 128 § 2; 1972 ex.s. c 153 § 21; 1971 ex.s. c 29 § 7. Formerly RCW 46.10.070.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.10.470 Operating upon public road or highway lawful, when. Notwithstanding the provisions of RCW

46.10.460, it shall be lawful to operate a snowmobile upon a public roadway or highway.

Where such roadway or highway is completely covered with snow or ice and has been closed by the responsible governing body to motor vehicle traffic during the winter months; or

When the responsible governing body gives notice that such roadway or highway is open to snowmobiles or all-terrain vehicle use; or

In an emergency during the period of time when and at locations where snow upon the roadway or highway renders such impassible to travel by automobile; or

When traveling along a designated snowmobile trail. [2011 c 171 § 31; 1972 ex.s. c 153 § 23; 1971 ex.s. c 29 § 11. Formerly RCW 46.10.110.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.10.490 Operating violations. (1) It is a traffic infraction for any person to operate any snowmobile:

(a) At a rate of speed greater than reasonable and prudent under the existing conditions.

(b) In a manner so as to endanger the property of another.

(c) Without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others.

(d) Without an adequate braking device which may be operated either by hand or foot.

(e) Without an adequate and operating muffling device which shall effectively blend the exhaust and motor noise in such a manner so as to preclude excessive or unusual noise, and, (i) on snowmobiles manufactured on or before January 4, 1973, which shall effectively limit such noise at a level of eighty-six decibels, or below, on the "A" scale at fifty feet, and (ii) on snowmobiles manufactured after January 4, 1973, which shall effectively limit such noise at a level of eighty-two decibels, or below, on the "A" scale at fifty feet, and (iii) on snowmobiles manufactured after January 1, 1975, which shall effectively limit such noise at a level of seventy-eight decibels, or below, as measured on the "A" scale at a distance of fifty feet, under testing procedures as established by the department of ecology; except snowmobiles used in organized racing events in an area designated for that purpose may use a bypass or cutout device. This section shall not affect the power of the department of ecology to adopt noise performance standards for snowmobiles. Noise performance standards adopted or to be adopted by the department of ecology shall be in addition to the standards contained in this section, but the department's standards shall supersede this section to the extent of any inconsistency.

(f) Upon the paved portion or upon the shoulder or inside bank or slope of any public roadway or highway, or upon the median of any divided highway, except as provided in RCW 46.10.460 and 46.10.470.

(g) In any area or in such a manner so as to expose the underlying soil or vegetation, or to injure, damage, or destroy trees or growing crops.

(h) Without a current registration decal affixed thereon, if not exempted under RCW 46.10.410 as now or hereafter amended.

(2) It is a misdemeanor for any person to operate any snowmobile so as to endanger the person of another or while under the influence of intoxicating liquor or narcotics or habit-forming drugs. [2011 c 171 § 32; 1980 c 148 § 1. Prior: 1979 ex.s. c 182 § 10; 1979 ex.s. c 136 § 43; 1975 1st ex.s. c 181 § 5; 1971 ex.s. c 29 § 9. Formerly RCW 46.10.090.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

46.10.500 Violations as traffic infractions—Exceptions—Civil liability. (1) Except as provided in RCW 46.10.490(2), 46.10.485, and 46.10.495, any violation of the provisions of this chapter is a traffic infraction: PROVIDED, That the penalty for failing to display a valid registration decal under RCW 46.10.490 as now or hereafter amended shall be a fine of forty dollars and such fine shall be remitted to the general fund of the governmental unit, which personnel issued the citation, for expenditure solely for snowmobile law enforcement.

(2) In addition to the penalties provided in RCW 46.10.490 and subsection (1) of this section, the operator and/or the owner of any snowmobile used with the permission of the owner shall be liable for three times the amount of any damage to trees, shrubs, growing crops, or other property injured as the result of travel by such snowmobile over the property involved. [2011 c 171 § 33; 1982 c 17 § 8; 1980 c 148 § 2. Prior: 1979 ex.s. c 182 § 14; 1979 ex.s. c 136 § 44; 1975 1st ex.s. c 181 § 6; 1971 ex.s. c 29 § 19. Formerly RCW 46.10.190.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

46.10.510 Refund of snowmobile fuel tax to snowmobile account. From time to time, but at least once each biennium, the director shall request the state treasurer to refund from the motor vehicle fund amounts which have been determined to be a tax on snowmobile fuel, and the treasurer shall refund such amounts determined under RCW 46.10.530, and place them in the snowmobile account in the general fund. [2011 c 171 § 34; 1994 c 262 § 3; 1979 ex.s. c 182 § 12; 1975 1st ex.s. c 181 § 3; 1973 1st ex.s. c 128 § 4; 1971 ex.s. c 29 § 15. Formerly RCW 46.10.150.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Chapter 46.12 RCW

CERTIFICATES OF TITLE

Sections

- 46.12.550 Refusal or cancellation of certificate—Notice—Penalty for subsequent operation—Appeals.
- 46.12.555 Quick title—Application requirements—Limitation—Sub-agents. (*Effective January 1, 2012.*)
- 46.12.560 Inspection by state patrol or other authorized inspector.

- 46.12.600 Destruction of vehicle—Surrender of certificate, penalty—
Report of settlement by insurance company—Market value
threshold.
- 46.12.630 Lists of registered and legal owners of vehicles—Furnished
for certain purposes—Penalty for unauthorized use.
- 46.12.640 Disclosure violations, penalties.
- 46.12.691 Custom vehicles.
- 46.12.700 Manufactured homes.
- 46.12.705 Repealed.
- 46.12.710 Repealed.
- 46.12.711 Street rod vehicle.
- 46.12.730 Disposition authorized, when.
- 46.12.735 Hearing—Appeal—Removal to court—Release after ruling.
- 46.12.740 Release without hearing.
- 46.12.745 Assignment of new number.

**46.12.550 Refusal or cancellation of certificate—
Notice—Penalty for subsequent operation—Appeals.** (1) The department may refuse to issue or may cancel a certificate of title at any time if the department determines that an applicant for a certificate of title is not entitled to a certificate of title. Notice of cancellation may be accomplished by sending a notice by first-class mail using the last known address in department records for the registered or legal owner or owners, and completing an affidavit of first-class mail. It is unlawful for any person to remove, drive, or operate the vehicle until a proper certificate of title has been issued. Any person removing, driving, or operating a vehicle after the refusal to issue or cancellation of the certificate of title is guilty of a gross misdemeanor.

(2)(a) The suspension of, revocation of, cancellation of, or refusal to issue a certificate of title or vehicle registration provided for in chapters 46.12 and 46.16A RCW by the director is conclusive unless the person whose registration or certificate is suspended, revoked, canceled, or refused appeals to the superior court of Thurston county or the person's county of residence.

(b) Notice of appeal must be filed within ten days after receipt of the notice of suspension, revocation, cancellation, or refusal. Upon the filing of the notice of appeal, the court shall issue an order to the director to show cause why the registration should not be granted or reinstated and return the order not less than ten days after the date of service of the notice to the director. Service must be in the manner as prescribed for the service of a summons and complaint in other civil actions.

(c) Upon the hearing on the order to show cause, the court shall hear evidence concerning matters with reference to the suspension, revocation, cancellation, or refusal of the registration or certificate and enter judgment either affirming or setting aside the suspension, revocation, cancellation, or refusal. [2011 c 171 § 35; 2010 c 161 § 315; 1994 c 262 § 5; 1975 c 25 § 12; 1961 c 12 § 46.12.160. Prior: 1959 c 166 § 14; prior: 1947 c 164 § 4(g); 1937 c 188 § 6(g); Rem. Supp. 1947 § 6312-6(g). Formerly RCW 46.12.160.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

**46.12.555 Quick title—Application requirements—
Limitation—Subagents. (Effective January 1, 2012.)** (1) The application for a quick title of a vehicle must be submitted by the owner or the owner's representative to the depart-

ment, participating county auditor or other agent, or subagent appointed by the director on a form furnished or approved by the department and must contain:

(a) A description of the vehicle, including make, model, vehicle identification number, type of body, and the odometer reading at the time of delivery of the vehicle, when required;

(b) The name and address of the person who is to be the registered owner of the vehicle and, if the vehicle is subject to a security interest, the name and address of the secured party; and

(c) Other information as may be required by the department.

(2) The application for a quick title must be signed by the person applying to be the registered owner and be sworn to by that person in the manner described under RCW 9A.72.085. The department must keep a copy of the application.

(3) The application for a quick title must be accompanied by:

(a) All fees and taxes due for an application for a certificate of title, including a quick title service fee under RCW 46.17.160; and

(b) The most recent certificate of title or other satisfactory evidence of ownership.

(4) All applications for quick title must meet the requirements established by the department.

(5) For the purposes of this section, "quick title" means a certificate of title printed at the time of application.

(6) The quick title process authorized under this section may not be used to obtain the first title issued to a vehicle previously designated as a salvage vehicle as defined in RCW 46.04.514.

(7) A subagent may process a quick title under this section only after (a) the department has instituted a process in which blank certificates of title can be inventoried; (b) the county auditor of the county in which the subagent is located has processed quick titles for a minimum of six months; and (c) the county auditor approves a request from a subagent in its county to process quick titles. [2011 c 326 § 1.]

Application—2011 c 326: "This act applies to quick title transactions processed on and after January 1, 2012." [2011 c 326 § 6.]

Effective date—2011 c 326: "This act takes effect January 1, 2012." [2011 c 326 § 7.]

46.12.560 Inspection by state patrol or other authorized inspector. (1)(a) Before accepting an application for a certificate of title, the department, county auditor or other agent, or subagent appointed by the director shall require an applicant to provide a certificate of vehicle inspection completed by the Washington state patrol or other authorized inspector if the vehicle:

(i) Was declared a total loss or salvage vehicle under the laws of this state;

(ii) Has been rebuilt after the certificate of title was returned to the department under RCW 46.12.600 and the vehicle was not kept by the registered owner at the time of the vehicle's destruction or declaration as a total loss; or

(iii) Is presented with documents from another state showing that the vehicle was a total loss or salvage vehicle

and has not been reissued a valid registration certificate from that state after the declaration of total loss or salvage.

(b) A vehicle presented for inspection must have all damaged major component parts replaced or repaired to meet all requirements in law and rule before the Washington state patrol will inspect the vehicle. The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the certificate of title and registration certificate.

(c) A Washington state patrol vehicle identification number specialist must ensure that all major component parts used for the reconstruction of a salvage or rebuilt vehicle were obtained legally, and must securely attach a marking at the driver's door latch pillar indicating the vehicle was previously destroyed or declared a total loss. It is a class C felony for a person to remove the marking indicating that the vehicle was previously destroyed or declared a total loss.

(2) A person presenting a vehicle for inspection under subsection (1) of this section must provide original invoices for new and used parts from:

(a) A vendor that is registered with the department of revenue or a comparable agency in the jurisdiction where the major component parts were purchased for the collection of retail sales or use taxes. The invoices must include:

- (i) The name and address of the business;
- (ii) A description of the part or parts sold;
- (iii) The date of sale; and

(iv) The amount of sale to include all taxes paid unless exempted by the department of revenue or a comparable agency in the jurisdiction where the major component parts were purchased;

(b) A vehicle wrecker licensed under chapter 46.80 RCW or a comparable business in the jurisdiction outside Washington state where the major component part was purchased; and

(c) Private individuals. The private individual must have the certificate of title to the vehicle where the parts were taken from unless the parts were obtained from a parts car owned by a collector. Bills of sale for parts must be notarized and include:

- (i) The names and addresses of the sellers and purchasers;
- (ii) A description of the vehicle and the part or parts being sold, including the make, model, year, and identification or serial number;
- (iii) The date of sale; and
- (iv) The purchase price of the vehicle part or parts.

(3) A person presenting a vehicle for inspection under this section who is unable to provide an acceptable release of interest or proof of ownership for a vehicle or major component part as described in this section shall apply for an ownership in doubt application described in RCW 46.12.680.

(4)(a) Before accepting an application for a certificate of title, the department, county auditor or other agent, or sub-agent appointed by the director shall require an applicant to provide a certificate of vehicle inspection completed by the Washington state patrol or other authorized inspector when the application is for a vehicle being titled for the first time as:

- (i) Assembled;
- (ii) Glider kit;

(iii) Homemade;

(iv) Kit vehicle;

(v) Street rod vehicle;

(vi) Custom vehicle; or

(vii) Subject to ownership in doubt under RCW 46.12.680.

(b) The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the certificate of title and registration certificate.

(5)(a) Before accepting an application for a certificate of title, the department, county auditor or other agent, or sub-agent appointed by the director shall require an applicant to provide a certificate of vehicle inspection completed by the Washington state patrol when the application is for a vehicle with a vehicle identification number that has been:

(i) Altered;

(ii) Defaced;

(iii) Obliterated;

(iv) Omitted;

(v) Removed; or

(vi) Otherwise absent.

(b) The application must include payment of the fee required in RCW 46.17.135.

(c) The Washington state patrol shall assign a new vehicle identification number to the vehicle and place or stamp the new number in a conspicuous position on the vehicle.

(d) The department shall use the new vehicle identification number assigned by the Washington state patrol as the official vehicle identification number assigned to the vehicle.

(6) The department may adopt rules as necessary to implement this section. [2011 c 114 § 7; 2010 c 161 § 303.]

Effective date—2011 c 114: See note following RCW 46.04.572.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.12.600 Destruction of vehicle—Surrender of certificate, penalty—Report of settlement by insurance company—Market value threshold. (1)(a) The registered owner or legal owner shall:

(i) Report the destruction of the vehicle issued a certificate of title or registration certificate to the department within fifteen days of its destruction; and

(ii) Submit the certificate of title or affidavit in lieu of title marked "DESTROYED." The registered owner's name, address, and the date of destruction must be clearly shown on the certificate of title or affidavit in lieu of title.

(b) It is a gross misdemeanor to fail to notify the department and be in possession of a certificate of title of a destroyed vehicle on the sixteenth day after the vehicle is destroyed and each day thereafter.

(2) The insurance company or self-insurer shall report the destruction or total loss of vehicles issued a certificate of title or registration certificate to the department within fifteen days after the settlement claim. The report must be submitted regardless of where or in what jurisdiction the total loss occurred. An insurer shall report total loss vehicles to the department in any of the following manners:

(a) Electronically through the department's online reporting system. An insurer choosing this option must

immediately destroy ownership documents after filing the electronic report;

(b) Submitting the certificate of title or affidavit in lieu of title marked "DESTROYED." The insurer's name, address, and the date of loss must be clearly shown on the certificate of title or affidavit in lieu of title; or

(c) Submitting a properly completed total loss claim settlement form provided by the department.

(3) The registered owner, legal owner, or insurer reporting the destruction or total loss of a motor vehicle six years old or older must include a statement on whether the fair market value of the motor vehicle immediately before its destruction was at least equal to the market value threshold. The age of the motor vehicle is determined by subtracting the model year from the current calendar year.

(4) The market value threshold is six thousand seven hundred ninety dollars or a greater amount as set by rule of the department. The department shall:

(a) Increase the market value threshold amount:

(i) When the consumer price index for all urban consumers, compiled by the bureau of labor statistics, United States department of labor, or its successor, for the west region, in the expenditure category "used cars and trucks," shows an annual average increase over the previous year;

(ii) By the same percentage increase of the annual average shown in the consumer price index; and

(iii) On July 1st of the year immediately following the year with the increase of the annual average;

(b) Round each increase of the market value threshold to the nearest ten dollars;

(c) Not increase the market value threshold amount if the amount of the increase would be less than fifty dollars; and

(d) Carry forward any unmade increases to succeeding years until the cumulative increase is at least fifty dollars. [2011 c 171 § 36; 2010 c 161 § 306; 2003 c 53 § 235; 2002 c 245 § 2; 1990 c 250 § 28; 1961 c 12 § 46.12.070. Prior: 1959 c 166 § 4; prior: 1947 c 164 § 3(b); 1939 c 182 § 1(b); 1937 c 188 § 5(b); Rem. Supp. 1947 § 6312-5(b). Formerly RCW 46.12.070.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

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

Additional notes found at www.leg.wa.gov

46.12.630 Lists of registered and legal owners of vehicles—Furnished for certain purposes—Penalty for unauthorized use. In addition to any other authority which it may have, the department of licensing may furnish lists of registered and legal owners of motor vehicles only for the purposes specified in this section to:

(1) The manufacturers of motor vehicles, or their authorized agents, to be used to enable those manufacturers to carry out the provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. Sec. 1382-1418), including amendments or additions thereto, respecting safety-related defects in motor vehicles;

(2) Any governmental agency of the United States or Canada, or political subdivisions thereof, to be used by it or by its authorized commercial agents or contractors only in connection with the enforcement of motor vehicle or traffic laws by, or programs related to traffic safety of, that governmental agency. Only such parts of the list as are required for completion of the work required of the agent or contractor shall be provided to such agent or contractor;

(3) A commercial parking company requiring the names and addresses of registered owners to notify them of outstanding parking violations. Subject to the disclosure agreement provisions of RCW 46.12.635 and the requirements of Executive Order 97-01, the department may provide only the parts of the list that are required for completion of the work required of the company;

(4) An authorized agent or contractor of the department, to be used only in connection with providing motor vehicle excise tax, licensing, title, and registration information to motor vehicle dealers;

(5) Any business regularly making loans to other persons to finance the purchase of motor vehicles, to be used to assist the person requesting the list to determine ownership of specific vehicles for the purpose of determining whether or not to provide such financing; or

(6) A company or its agents operating a toll facility under chapter 47.46 RCW or other applicable authority requiring the names, addresses, and vehicle information of motor vehicle registered owners to identify toll violators.

Where both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both addresses will be disclosed in response to requests for disclosure from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.

If a list of registered and legal owners of motor vehicles is used for any purpose other than that authorized in this section, the manufacturer, governmental agency, commercial parking company, authorized agent, contractor, financial institution, toll facility operator, or their authorized agents or contractors responsible for the unauthorized disclosure or use will be denied further access to such information by the department of licensing. [2011 c 171 § 37; 2005 c 340 § 1; 2004 c 230 § 1. Prior: 1997 c 432 § 6; 1997 c 33 § 1; 1982 c 215 § 1. Formerly RCW 46.12.370.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.12.640 Disclosure violations, penalties. (1) The department may review the activities of a person who receives vehicle record information to ensure compliance with the limitations imposed on the use of the information. The department shall suspend or revoke for up to five years the privilege of obtaining vehicle record information of a person found to be in violation of chapter 42.56 RCW, this chapter, or a disclosure agreement executed with the department.

(2) In addition to the penalty in subsection (1) of this section:

(a) The unauthorized disclosure of information from a department vehicle record; or

(b) The use of a false representation to obtain information from the department's vehicle records; or

(c) The use of information obtained from the department vehicle records for a purpose other than what is stated in the request for information or in the disclosure agreement executed with the department; or

(d) The sale or other distribution of any vehicle owner name or address to another person not disclosed in the request or disclosure agreement

is a gross misdemeanor punishable by a fine not to exceed ten thousand dollars, or by imprisonment in a county jail for up to three hundred sixty-four days, or by both such fine and imprisonment for each violation. [2011 c 96 § 30; 2005 c 274 § 305; 1990 c 232 § 3. Formerly RCW 46.12.390.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Legislative finding and purpose—1990 c 232: See note following RCW 46.12.635.

46.12.691 Custom vehicles. (1) When applying for a certificate of title for a custom vehicle for the first time, the owner of the custom vehicle must:

(a) Submit a certification that the custom vehicle:

(i) Will be maintained for occasional transportation, exhibitions, club activities, parades, tours, and similar uses; and

(ii) Will not be used for general daily transportation; and

(b) Provide a certificate of vehicle inspection as required under RCW 46.12.560(4).

(2) The model year and the year of manufacture that are listed on the certificate of title of a custom vehicle must be the model year and year of manufacture that the body of the custom vehicle resembles.

(3) The presence of modern equipment including, but not limited to, brakes, engines, or seat belts, or the presence of optional equipment referenced in RCW 46.37.518, on a custom vehicle does not invalidate the year of manufacture on the certificate of title.

(4) A custom vehicle must be registered under RCW 46.18.220. [2011 c 114 § 4.]

Effective date—2011 c 114: See note following RCW 46.04.572.

46.12.700 Manufactured homes. (1) **Titling options.** An owner of a manufactured home shall establish ownership in the manufactured home by either:

(a) Applying for a certificate of title as required under this chapter; or

(b) Eliminating the certificate of title under chapter 65.20 RCW.

(2) **Exemption.** This section does not apply to a manufactured home held for resale by a dealer or manufacturer.

(3) **Transferring ownership.** A registered owner of record must sign the certificate of title releasing the owner's interest when transferring ownership of a manufactured home. If the manufactured home was manufactured before June 15, 1976, the registered owner must sign an affidavit on a form approved by the department. The affidavit must state that the purchaser was notified that failure of the manufactured home to meet federal housing and urban development standards or failure of the manufactured home to meet a fire

and safety inspection by the department of labor and industries may result in denial by a local jurisdiction of a permit to site the manufactured home.

(4) **Evidence of taxes paid.** Before accepting an application for a certificate of title for a manufactured home, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant to provide evidence that any taxes due on the sale of the manufactured home under chapters 82.45 and 84.52 RCW have been paid. Acceptable evidence includes a copy of:

(a) The real estate excise tax affidavit that has been stamped by the county treasurer; or

(b) A treasurer certificate that is prepared by the treasurer of the county in which a used manufactured home is located and that states that all property taxes due upon the used manufactured home being sold have been satisfied.

(5) **County assessor notification.** The department shall notify the county assessor of the county where the manufactured home is located when ownership of a manufactured home is transferred. The notification must include the name and address of the former owner and the new owner.

(6) **Title elimination.** The certificate of title for a manufactured home may be eliminated or not issued when the manufactured home is registered under chapter 65.20 RCW. If the certificate of title is eliminated or not issued, the application must be recorded in the county property records of the county where the real property to which the home is affixed is located. All vehicle license fees and taxes applicable to manufactured homes under this chapter are due and must be collected before recording the ownership with the county auditor.

(7) **Rules.** The department may adopt rules as necessary to implement this section. [2011 c 171 § 38; 2010 c 161 § 322; 2005 c 399 § 4; 1993 c 154 § 2. Prior: 1989 c 343 § 20; 1989 c 337 § 4; 1981 c 304 § 2; 1979 c 158 § 137; 1971 ex.s. c 231 § 14. Formerly RCW 46.12.290.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

46.12.705 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

46.12.710 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

46.12.711 Street rod vehicle. (1) When applying for a certificate of title for a street rod vehicle for the first time, the owner of the street rod vehicle must:

(a) Submit a certification that the street rod vehicle:

(i) Will be maintained for occasional transportation, exhibitions, club activities, parades, tours, and similar uses; and

(ii) Will not be used for general daily transportation; and

(b) Provide a certificate of vehicle inspection as required under RCW 46.12.560(4).

(2) The model year and the year of manufacture that are listed on the certificate of title of a street rod vehicle must be

the model year and year of manufacture that the body of the street rod vehicle resembles.

(3) The presence of modern equipment including, but not limited to, brakes, engines, or seat belts, or the presence of optional equipment referenced in RCW 46.37.518, on a street rod vehicle does not invalidate the year of manufacture on the certificate of title.

(4) A street rod vehicle must be registered under RCW 46.18.220. [2011 c 114 § 2.]

Effective date—2011 c 114: See note following RCW 46.04.572.

46.12.730 Disposition authorized, when. Unless a claim of ownership to the article or articles is established pursuant to RCW 46.12.735, the law enforcement agency seizing the vehicle, watercraft, camper, or component part thereof may dispose of them by destruction, by selling at public auction to the highest bidder, or by holding the article or articles for the official use of the agency, when:

(1) The true identity of the article or articles cannot be established by restoring the original manufacturer's serial number or other distinguishing numbers or identification marks or by any other means;

(2) After the true identity of the article or articles has been established, the seizing law enforcement agency cannot locate the person who is the lawful owner or if such lawful owner or his or her successor in interest fails to claim the article or articles within forty-five days after receiving notice from the seizing law enforcement agency that the article or articles is in its possession.

No disposition of the article or articles pursuant to this section shall be undertaken until at least sixty days have elapsed from the date of seizure and written notice of the right to a hearing to establish a claim of ownership pursuant to RCW 46.12.735 and of the potential disposition of the article or articles shall have first been served upon the person who held possession or custody of the article when it was impounded and upon any other person who, prior to the final disposition of the article, has notified the seizing law enforcement agency in writing of a claim to ownership or lawful right to possession thereof. [2011 c 171 § 39; 2010 c 8 § 9009; 1975-'76 2nd ex.s. c 91 § 3. Formerly RCW 46.12.320.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

46.12.735 Hearing—Appeal—Removal to court—Release after ruling. (1) Any person may submit a written request for a hearing to establish a claim of ownership or right to lawful possession of the vehicle, watercraft, camper, or component part thereof seized pursuant to this section.

(2) Upon receipt of a request for hearing, one shall be held before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW.

(3) Such hearing shall be held within a reasonable time after receipt of a request therefor. Reasonable investigative activities, including efforts to establish the identity of the article or articles and the identity of the person entitled to the lawful possession or custody of the article or articles shall be

considered in determining the reasonableness of the time within which a hearing must be held.

(4) The hearing and any appeal therefrom shall be conducted in accordance with Title 34 RCW.

(5) The burden of producing evidence shall be upon the person claiming to be the lawful owner or to have the lawful right of possession to the article or articles.

(6) Any person claiming ownership or right to possession of an article or articles subject to disposition under RCW 46.12.725 through 46.12.740 may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is two hundred dollars or more. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to judgment for costs and reasonable attorney's fees. For purposes of this section the seizing law enforcement agency shall not be considered a claimant.

(7) The seizing law enforcement agency shall promptly release the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof. [2011 c 171 § 40; 1981 c 67 § 27; 1975-'76 2nd ex.s. c 91 § 4. Formerly RCW 46.12.330.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

46.12.740 Release without hearing. The seizing law enforcement agency may release the article or articles impounded pursuant to this section to the person claiming ownership without a hearing pursuant to RCW 46.12.735 when such law enforcement agency is satisfied after an appropriate investigation as to the claimant's right to lawful possession. If no hearing is contemplated as provided for in RCW 46.12.735 such release shall be within a reasonable time following seizure. Reasonable investigative activity, including efforts to establish the identity of the article or articles and the identity of the person entitled to lawful possession or custody of the article or articles shall be considered in determining the reasonableness of the time in which release must be made. [2011 c 171 § 41; 1975-'76 2nd ex.s. c 91 § 5. Formerly RCW 46.12.340.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

46.12.745 Assignment of new number. An identification number shall be assigned to any article impounded pursuant to RCW 46.12.725 in accordance with the rules promulgated by the department of licensing prior to:

(1) The release of the article from the custody of the seizing agency; or

(2) The use of the article by the seizing agency. [2011 c 171 § 42; 1979 c 158 § 138; 1975-'76 2nd ex.s. c 91 § 6. Formerly RCW 46.12.350.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

Chapter 46.16 RCW
VEHICLE LICENSES

Sections

- 46.16.30922 Repealed.
46.16.900 Recodified as RCW 46.16A.900.

46.16.30922 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

46.16.900 Recodified as RCW 46.16A.900. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 46.16A RCW
REGISTRATION

Sections

- 46.16A.030 Registration and display of plates required—Penalties—Expired registration, impoundment.
46.16A.060 Registration—Emission control inspections required—Exemptions—Educational information—Rules.
46.16A.070 Registration—Cancellation, refusal, etc.—Appeals.
46.16A.080 Registration—Exemptions.
46.16A.090 Registration—Voluntary and opt-out donations—Discover pass.
46.16A.120 Forwarding and payment of standing, stopping, and parking violations and other infractions required before registration renewal.
46.16A.120 Forwarding and payment of standing, stopping, and parking violations and other infractions required before registration renewal (*as amended by 2010 c 249*). (*Contingent effective date*).
46.16A.200 License plates.
46.16A.210 Emblems—Material, display requirements.
46.16A.215 Military emblems—Fees.
46.16A.405 Campers, mopeds, and wheelchair conveyances.
46.16A.435 Off-road motorcycles—Declaration required—Contents. (*Effective January 1, 2012*).
46.16A.445 Street rod or custom vehicles.
46.16A.455 Trucks, buses, and for hire vehicles based on gross weight.
46.16A.510 Immunity from liability for issuing a vehicle registration or license plates to nonroadworthy vehicle.
46.16A.530 Unlawful to carry passengers for hire without vehicle registration.
46.16A.540 Overloading registered capacity—Additional registration—Penalties—Exceptions.
46.16A.545 Overloading registered capacity—Penalties.
46.16A.900 Severability—1973 1st ex.s. c 132.

46.16A.030 Registration and display of plates required—Penalties—Expired registration, impoundment. (1) Vehicles must be registered as required by this chapter and must display license plates or decals assigned by the department.

(2) It is unlawful for a person to operate any vehicle on a public highway of this state without having in full force and effect a current and proper vehicle registration and displaying license plates on the vehicle.

(3) Vehicle license plates or registration certificates, whether original issues or duplicates, may not be issued or furnished by the department until the applicant makes satisfactory application for a certificate of title or presents satisfactory evidence that a certificate of title covering the vehicle has been previously issued.

(4) Failure to make initial registration before operating a vehicle on the public highways of this state is a traffic infraction. A person committing this infraction must pay a fine of five hundred twenty-nine dollars, which may not be sus-

pending, deferred, or reduced. This fine is in addition to any delinquent taxes and fees that must be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion. The five hundred twenty-nine dollar fine must be deposited into the vehicle licensing fraud account created in the state treasury in RCW 46.68.250.

(5) Failure to renew an expired registration before operating a vehicle on the public highways of this state is a traffic infraction.

(6) It is a gross misdemeanor for a resident, as identified in RCW 46.16A.140, to register a vehicle in another state, evading the payment of any tax or vehicle license fee imposed in connection with registration. It is punishable, in lieu of the fine in subsection (4) of this section, as follows:

(a) For a first offense:

(i) Up to three hundred sixty-four days in the county jail;

(ii) Payment of a fine of five hundred twenty-nine dollars plus any applicable assessments, which may not be suspended, deferred, or reduced. The fine of five hundred twenty-nine dollars must be deposited into the vehicle licensing fraud account created in the state treasury in RCW 46.68.250;

(iii) A fine of one thousand dollars to be deposited into the vehicle licensing fraud account created in the state treasury in RCW 46.68.250, which may not be suspended, deferred, or reduced; and

(iv) The delinquent taxes and fees, which must be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion, and which may not be suspended, deferred, or reduced;

(b) For a second or subsequent offense:

(i) Up to three hundred sixty-four days in the county jail;

(ii) Payment of a fine of five hundred twenty-nine dollars plus any applicable assessments, which may not be suspended, deferred, or reduced. The fine of five hundred twenty-nine dollars must be deposited into the vehicle licensing fraud account created in the state treasury in RCW 46.68.250;

(iii) A fine of five thousand dollars to be deposited into the vehicle licensing fraud account created in the state treasury in RCW 46.68.250, which may not be suspended, deferred, or reduced; and

(iv) The amount of delinquent taxes and fees, which must be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion, and which may not be suspended, deferred, or reduced.

(7) A vehicle with an expired registration of more than forty-five days parked on a public street may be impounded by a police officer under RCW 46.55.113(2). [2011 c 171 § 43; 2011 c 96 § 31. Prior: 2010 c 270 § 1; 2010 c 217 § 5; 2010 c 161 § 403; 2007 c 242 § 2; 2006 c 212 § 1; prior: 2005 c 350 § 1; 2005 c 323 § 2; 2005 c 213 § 6; prior: 2003 c 353 § 8; 2003 c 53 § 238; 2000 c 229 § 1; 1999 c 277 § 4; prior: 1997 c 328 § 2; 1997 c 241 § 13; 1996 c 184 § 1; 1993 c 238 § 1; 1991 c 163 § 1; 1989 c 192 § 2; 1986 c 186 § 1; 1977 ex.s. c 148 § 1; 1973 1st ex.s. c 17 § 2; 1972 ex.s. c 5 § 2; 1969 c 27 § 3; 1967 c 202 § 2; 1963 ex.s. c 3 § 51; 1961 ex.s. c 21 § 32; 1961 c 12 § 46.16.010; prior: 1955 c 265 § 1; 1947 c 33 § 1; 1937 c 188 § 15; Rem. Supp. 1947 § 6312-15; 1929 c 99 § 5; RRS § 6324. Formerly RCW 46.16.010.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Reviser's note: This section was amended by 2011 c 96 § 31 and by 2011 c 171 § 43, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective date—2005 c 350: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 350 § 2.]

Declaration and intent—2005 c 323: "When a person establishes residency in this state, unless otherwise exempt by statute, the person must register any vehicles to be operated on public highways, and pay all required licensing fees and taxes. Washington residents must renew vehicle registrations annually as well. The intent of this act is to increase the monetary penalties associated with failure to properly register vehicles in the state of Washington." [2005 c 323 § 1.]

Effective date—2005 c 323: "This act takes effect August 1, 2005." [2005 c 323 § 4.]

Application—2005 c 323: "This act applies to registrations due or to become due on or after January 1, 2006." [2005 c 323 § 5.]

Findings—Construction—Effective date—2005 c 213: See notes following RCW 46.09.300.

Effective date—2003 c 353: See note following RCW 46.04.320.

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

Legislative intent—1989 c 192: "The legislature recognizes that there are residents of this state who intentionally register motor vehicles in other states to evade payment of taxes and fees required by the laws of this state. This results in a substantial loss of revenue to the state. It is the intent of the legislature to impose a stronger criminal penalty upon those residents who defraud the state, thereby enhancing compliance with the registration laws of this state and further enhancing enforcement and collection efforts.

In order to encourage voluntary compliance with the registration laws of this state, administrative penalties associated with failing to register a motor vehicle are waived until September 1, 1989. It is not the intent of the legislature to waive traffic infraction or criminal traffic violations imposed prior to July 23, 1989." [1989 c 192 § 1.]

Additional notes found at www.leg.wa.gov

46.16A.060 Registration—Emission control inspections required—Exemptions—Educational information—Rules. (1) The department, county auditor or other agent, or subagent appointed by the director may not issue or renew a motor vehicle registration or change the registered owner of a registered vehicle for any motor vehicle required to be inspected under chapter 70.120 RCW, unless the application for issuance or renewal is: (a) Accompanied by a valid certificate of compliance or a valid certificate of acceptance issued as required under chapter 70.120 RCW; or (b) exempt, as described in subsection (2) of this section. The certificates must have a date of validation that is within twelve months of the assigned registration renewal date. Certificates for fleet or owner tested diesel vehicles may have a date of validation that is within twelve months of the assigned registration renewal date.

(2) The following motor vehicles are exempt from emission test requirements:

(a) Motor vehicles that are less than five years old or more than twenty-five years old;

(b) Motor vehicles that are a 2009 model year or newer;

(c) Motor vehicles powered exclusively by electricity, propane, compressed natural gas, or liquid petroleum gas;

(d) Motorcycles as defined in RCW 46.04.330 and motor-driven cycles as defined in RCW 46.04.332;

(e) Farm vehicles as defined in RCW 46.04.181;

(f) Street rod vehicles as defined in RCW 46.04.572 and custom vehicles as defined in RCW 46.04.161;

(g) Used vehicles that are offered for sale by a motor vehicle dealer licensed under chapter 46.70 RCW;

(h) Classes of motor vehicles exempted by the director of the department of ecology; and

(i) Hybrid motor vehicles that obtain a rating by the environmental protection agency of at least fifty miles per gallon of gas during city driving. For purposes of this section, a hybrid motor vehicle is one that uses propulsion units powered by both electricity and gas.

(3) The department of ecology shall provide information to motor vehicle owners:

(a) Regarding the boundaries of emission contributing areas and restrictions established under this section that apply to vehicles registered in such areas; and

(b) On the relationship between motor vehicles and air pollution and steps motor vehicle owners should take to reduce motor vehicle related air pollution.

(4) The department of licensing shall:

(a) Notify all registered motor vehicle owners affected by the emission testing program that they must have an emission test to renew their registration;

(b) Adopt rules implementing and enforcing this section, except for subsection (2)(e) of this section, as specified in chapter 34.05 RCW.

(5) A motor vehicle may not be registered, leased, rented, or sold for use in the state, starting with the model year as provided in RCW 70.120A.010, unless the vehicle:

(a) Has seven thousand five hundred miles or more; or

(b)(i) Is consistent with the vehicle emission standards and carbon dioxide equivalent emission standards adopted by the department of ecology; and

(ii) Has a California certification label for all emission standards, and carbon dioxide equivalent emission standards necessary to meet fleet average requirements.

(6) The department of licensing, in consultation with the department of ecology, may adopt rules necessary to implement this section and may provide for reasonable exemptions to these requirements. The department of ecology may exempt public safety vehicles from meeting the standards where the department finds that vehicles necessary to meet the needs of public safety agencies are not otherwise reasonably available. [2011 c 114 § 6; 2010 c 161 § 406; 2002 c 24 § 1; 1998 c 342 § 6; 1991 c 199 § 209; 1990 c 42 § 318; 1989 c 240 § 1; 1985 c 7 § 111. Prior: 1983 c 238 § 1; 1983 c 237 § 3; 1980 c 176 § 1; 1979 ex.s. c 163 § 11. Formerly RCW 46.16.015.]

Effective date—2011 c 114: See note following RCW 46.04.572.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Legislative finding—1983 c 237: See note following RCW 46.37.467.

Additional notes found at www.leg.wa.gov

46.16A.070 Registration—Cancellation, refusal, etc.—Appeals. (1) The department may refuse to issue or may cancel a registration certificate at any time when the department determines that an applicant for registration is not entitled to a registration certificate. Notice of cancellation may be accomplished by sending a notice by first-class mail using the last known address in department records for the registered or legal owner or owners, and completing an affidavit of first-class mail. It is unlawful for any person to remove, drive, or operate the vehicle until a proper registration certificate has been issued. A person removing, driving, or operating a vehicle after the refusal to issue or cancellation of the registration is guilty of a gross misdemeanor.

(2)(a) The suspension, revocation, cancellation, or refusal by the director of a registration certificate provided under this chapter is conclusive unless the person whose registration or certificate is suspended, revoked, canceled, or refused appeals to the superior court of Thurston county or the person's county of residence.

(b) Notice of appeal must be filed within ten days after receipt of the notice of suspension, revocation, cancellation, or refusal. Upon the filing of the notice of appeal, the court shall issue an order to the director to show cause why the registration should not be granted or reinstated and return the order not less than ten days after the date of service to the director. Service must be in the same manner as prescribed for the service of a summons and complaint in other civil actions.

(c) Upon the hearing on the order to show cause, the court shall hear evidence concerning matters with reference to the suspension, revocation, cancellation, or refusal of the registration and shall enter judgment either affirming or setting aside the suspension, revocation, cancellation, or refusal. [2011 c 171 § 44; 2010 c 161 § 414.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.16A.080 Registration—Exemptions. The following vehicles are not required to be registered under this chapter:

(1) Converter gears used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle;

(2) Electric-assisted bicycles;

(3)(a) Farm implements, tractors, trailers, and other farm vehicles (i) operated within a radius of fifteen miles of the farm where it is principally used or garaged, including trailers designed as cook or bunk houses, (ii) used exclusively for animal herding, and (iii) temporarily operating or drawn upon the public highways, and (b) trailers used exclusively to transport farm implements from one farm to another during daylight hours or at night when the trailer is equipped with lights that comply with applicable law;

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(4) Forklifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses they serve;

(5) Golf carts, as defined in RCW 46.04.1945, operating within a designated golf cart zone as described in RCW 46.08.175;

(6) Motor vehicles operated solely within a national recreation area that is not accessible by a state highway, including motorcycles, motor homes, passenger cars, and sport utility vehicles. This exemption applies only after initial registration;

(7) Motorized foot scooters;

(8) Nurse rigs or equipment auxiliary for the use of and designed or modified for the fueling, repairing, or loading of spray and fertilizer applicator rigs and not used, designed, or modified primarily for the purpose of transportation;

(9) Off-road vehicles operated on a street, road, or highway as authorized under RCW 46.09.360, or nonhighway roads under RCW 46.09.450;

(10) Special highway construction equipment;

(11) Dump trucks and tractor-dump trailer combinations that are:

(a) Designed and used primarily for construction work on highways;

(b) Not designed or used primarily for the transportation of persons or property on a public highway; and

(c) Only incidentally operated or moved over the highways;

(12) Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation;

(13) Tow dollies;

(14) Trams used for transporting persons to and from facilities related to the horse racing industry as regulated in chapter 67.16 RCW, as long as the public right-of-way routes over which the trams operate are not more than one mile from end to end, the public rights-of-way over which the tram operates have average daily traffic of not more than fifteen thousand vehicles per day, and the activity is in conformity with federal law. The operator must be a licensed driver and at least eighteen years old. For the purposes of this section, "tram" also means a vehicle, or combination of vehicles linked together with a single mode of propulsion, used to transport persons from one location to another; and

(15) Vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks. [2011 c 171 § 45; 2010 c 161 § 404.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.16A.090 Registration—Voluntary and opt-out donations—Discover pass. (1) The department, county auditor or other agent, or subagent appointed by the director shall provide an opportunity for a vehicle owner to make a voluntary donation as provided in this section when applying for an initial or renewal vehicle registration.

(2)(a) A vehicle owner who registers a vehicle under this chapter may donate one dollar or more to the organ and tissue donation awareness account to promote the donation of organs and tissues under the uniform anatomical gift act as described in chapter 68.64 RCW. The donation of one or more dollars is voluntary and may be refused by the vehicle owner.

(b) The department, county auditor or other agent, or subagent appointed by the director shall:

(i) Ask a vehicle owner applying for a vehicle registration if the owner would like to donate one dollar or more;

(ii) Inform a vehicle owner of the option for organ and tissue donations as required under RCW 46.20.113; and

(iii) Make information booklets or other informational material available regarding the importance of organ and tissue donations to vehicle owners.

(c) All reasonable costs associated with the creation of the donation program created under this section must be paid proportionally or by another agreement by a participating Washington state organ procurement organization established for organ and tissue donation awareness purposes by the Washington state organ procurement organizations. For the purposes of this section, "reasonable costs" and "Washington state organ procurement organization" have the same meaning as in RCW 68.64.010.

(3) The department shall collect from a vehicle owner who pays a vehicle license fee under RCW 46.17.350(1) (a), (d), (e), (g), (h), (j), (n), (o), or (q) or who registers a vehicle under RCW 46.16A.455 with a declared gross weight of ten thousand pounds or less a voluntary donation of five dollars. The donation may not be collected from any vehicle owner actively opting not to participate in the donation program. The department shall ensure that the opt-out donation under this section is clear, visible, and prominently displayed in both paper and online vehicle registration renewals. Notification of intent to not participate in the donation program must be provided annually at the time of vehicle registration renewal. The donation must be deposited in the state parks renewal and stewardship account established in RCW 79A.05.215 to be used for the operation and maintenance of state parks.

(4) Beginning with vehicle license fees that are due or will become due on or after October 1, 2011, a vehicle owner who registers a vehicle under this chapter may purchase a discover pass for a fee of thirty dollars, as may be adjusted for inflation under RCW 79A.80.020. Purchase of the discover pass is voluntary by the vehicle owner. The discover pass fee must be deposited in the recreation access pass account created in RCW 79A.80.090. The department, county auditor, or other agent or subagent appointed by the director is not responsible for delivering a purchased discover pass to a motor vehicle owner. The agencies, as defined in RCW 79A.80.010, must deliver the purchased discover pass to a motor vehicle owner. [2011 c 320 § 12; 2010 c 161 § 420; 2009 c 512 § 1; 2007 c 340 § 1. Formerly RCW 46.16.076.]

Effective date—2011 c 320 § 12: "Section 12 of this act takes effect October 1, 2011." [2011 c 320 § 26.]

Findings—Intent—2011 c 320: See RCW 79A.80.005.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.16A.120 Forwarding and payment of standing, stopping, and parking violations and other infractions required before registration renewal. (1) Each court and government agency located in this state having jurisdiction over standing, stopping, and parking violations, the use of a *photo enforcement system under RCW 46.63.160, the use of automated traffic safety cameras under RCW 46.63.170, and the use of automated school bus safety cameras under RCW 46.63.180 may forward to the department any outstanding:

(a) Standing, stopping, and parking violations;

(b) Photo enforcement infractions issued under **RCW 46.63.030(1)(d);

(c) Automated traffic safety camera infractions issued under ***RCW 46.63.030(1)(f); and

(d) Automated school bus safety camera infractions issued under RCW 46.63.030(1)(e).

(2) Violations and infractions described in subsection (1) of this section must be reported to the department in the manner described in RCW 46.20.270(3).

(3) The department shall:

(a) Record the violations and infractions on the matching vehicle records; and

(b) Send notice approximately one hundred twenty days in advance of the current vehicle registration expiration date to the registered owner listing the dates and jurisdictions in which the violations occurred, the amounts of unpaid fines and penalties, and the surcharge to be collected. Only those violations and infractions received by the department one hundred twenty days or more before the current vehicle registration expiration date will be included in the notice. Violations and infractions received by the department later than one hundred twenty days before the current vehicle registration expiration date that are not satisfied will be delayed until the next vehicle registration expiration date.

(4) The department, county auditor or other agent, or subagent appointed by the director shall not renew a vehicle registration if there are any outstanding standing, stopping, and parking violations, and other infractions issued under **RCW 46.63.030(1)(d) for the vehicle unless:

(a) The outstanding standing, stopping, or parking violations were received by the department within one hundred twenty days before the current vehicle registration expiration;

(b) There is a change in registered ownership; or

(c) The registered owner presents proof of payment of each violation and infraction provided in this section and the registered owner pays the surcharge required under RCW 46.17.030.

(5) The department shall:

(a) Forward a change in registered ownership information to the court or government agency who reported the outstanding violations or infractions; and

(b) Remove the outstanding violations and infractions from the vehicle record. [2011 c 375 § 8; 2010 c 161 § 430; 2004 c 231 § 4; 1990 2nd ex.s. c 1 § 401; 1984 c 224 § 1. Formerly RCW 46.16.216.]

Reviser's note: *(1) "Photo enforcement system" was renamed "photo toll system" pursuant to 2010 c 249 § 6.

** (2) RCW 46.63.030 was amended by 2010 c 249 § 5, deleting subsection (1)(d).

*** (3) RCW 46.63.030 was amended by 2010 c 249 § 5, changing subsection (1)(e) to subsection (1)(d). The 2011 c 375 § 8 amendments changed subsection (1)(e) to subsection (1)(f).

Intent—2011 c 375: See note following RCW 46.63.180.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

46.16A.120 Forwarding and payment of standing, stopping, and parking violations and other infractions required before registration renewal (as amended by 2010 c 249). (Contingent effective date.) ~~((1) To renew a vehicle license, an applicant shall satisfy all listed standing, stopping, and parking violations, and civil penalties issued under RCW 46.63.160 for the vehicle incurred while the vehicle was registered in the applicant's name and forwarded to the department pursuant to RCW 46.20.270(3). For the purposes of this section, "listed" standing, stopping, and parking violations, and civil penalties issued under RCW 46.63.160 include only those violations for which notice has been received from state or local agencies or courts by the department one hundred twenty days or more before the date the vehicle license expires and that are placed on the records of the department. Notice of such violations received by the department later than one hundred twenty days before that date that are not satisfied shall be considered by the department in connection with any applications for license renewal in any subsequent license year. The renewal application may be processed by the department or its agents only if the applicant:~~

~~(a) Presents a preprinted renewal application showing no listed standing, stopping, or parking violations, or civil penalties issued under RCW 46.63.160, or in the absence of such presentation, the agent verifies the information that would be contained on the preprinted renewal application; or~~

~~(b) If listed standing, stopping, or parking violations, or civil penalties issued under RCW 46.63.160 exist, presents proof of payment and pays a fifteen dollar surcharge.~~

~~(2) The surcharge shall be allocated as follows:~~

~~(a) Ten dollars shall be deposited in the motor vehicle fund to be used exclusively for the administrative costs of the department of licensing; and~~

~~(b) Five dollars shall be retained by the agent handling the renewal application to be used by the agent for the administration of this section.~~

~~(3) If there is a change in the registered owner of the vehicle, the department shall forward the information regarding the change to the state or local charging jurisdiction and release any hold on the renewal of the vehicle license resulting from parking violations or civil penalties issued under RCW 46.63.160 incurred while the certificate of license registration was in a previous registered owner's name.~~

~~(4) The department shall send to all registered owners of vehicles who have been reported to have outstanding listed parking violations or civil penalties issued under RCW 46.63.160, at the time of renewal, a statement setting out the dates and jurisdictions in which the violations occurred as well as the amounts of unpaid fines and penalties relating to them and the surcharge to be collected.)~~

(1) Each court and government agency located in this state having jurisdiction over standing, stopping, and parking violations, the use of a photo toll system under RCW 46.63.160, the use of automated traffic safety cameras under

RCW 46.63.170, and the use of automated school bus safety cameras under RCW 46.63.180 may forward to the department any outstanding:

(a) Standing, stopping, and parking violations;

(b) Civil penalties for toll nonpayment detected through the use of photo toll systems issued under RCW 46.63.160;

(c) Automated traffic safety camera infractions issued under RCW 46.63.030(1)(d); and

(d) Automated school bus safety camera infractions issued under *RCW 46.63.160(1)(e).

(2) Violations, civil penalties, and infractions described in subsection (1) of this section must be reported to the department in the manner described in RCW 46.20.270(3).

(3) The department shall:

(a) Record the violations, civil penalties, and infractions on the matching vehicle records; and

(b) Send notice approximately one hundred twenty days in advance of the current vehicle registration expiration date to the registered owner listing the dates and jurisdictions in which the violations, civil penalties, and infractions occurred, the amounts of unpaid fines and penalties, and the surcharge to be collected. Only those violations, civil penalties, and infractions received by the department one hundred twenty days or more before the current vehicle registration expiration date will be included in the notice. Violations, civil penalties, and infractions received by the department later than one hundred twenty days before the current vehicle registration expiration date that are not satisfied will be delayed until the next vehicle registration expiration date.

(4) The department, county auditor or other agent, or subagent appointed by the director shall not renew a vehicle registration if there are any outstanding standing, stopping, and parking violations, and other civil penalties issued under RCW 46.63.160 for the vehicle unless:

(a) The outstanding standing, stopping, or parking violations and civil penalties were received by the department within one hundred twenty days before the current vehicle registration expiration;

(b) There is a change in registered ownership; or

(c) The registered owner presents proof of payment of each violation, civil penalty, and infraction provided in this section and the registered owner pays the surcharge required under RCW 46.17.030.

(5) The department shall:

(a) Forward a change in registered ownership information to the court or government agency who reported the outstanding violations, civil penalties, or infractions; and

(b) Remove the outstanding violations, civil penalties, and infractions from the vehicle record. [2011 c 375 § 9; 2010 c 249 § 10; 2004 c 231 § 4; 1990 2nd ex.s. c 1 § 401; 1984 c 224 § 1. Formerly RCW 46.16.216.]

Reviser's note: *(1) The reference to RCW 46.63.160(1)(e) is in error. RCW 46.63.030(1)(e) was apparently intended.

** (2) The contingent effective version of this section, 2010 c 249 § 10, was amended by chapter 375, Laws of 2011 without cognizance of the changes made to this section by 2010 c 161 § 430, effective July 1, 2011, thus creating an unmergeable double amendment upon the occurrence of the contingency under 2011 c 375 § 10.

Intent—2011 c 375: See note following RCW 46.63.180.

Contingent effective date—2011 c 375 §§ 5, 7, and 9: See note following RCW 46.63.030.

Contingent effective date—2010 c 249: See note following RCW 46.16A.200.

Additional notes found at www.leg.wa.gov

46.16A.200 License plates. (1) **Design.** All license plates may be obtained by the director from the metal working plant of a state correctional facility or from any source in accordance with existing state of Washington purchasing procedures. License plates:

- (a) May vary in background, color, and design;
- (b) Must be legible and clearly identifiable as a Washington state license plate;
- (c) Must designate the name of the state of Washington without abbreviation;
- (d) Must be treated with fully reflectorized materials designed to increase visibility and legibility at night;
- (e) Must be of a size and color and show the registration period as determined by the director; and
- (f) Before July 1, 2010, may display a symbol or artwork approved by the former special license plate review board and the legislature. Beginning July 1, 2010, special license plate series approved by the department and enacted into law by the legislature may display a symbol or artwork approved by the department.

(2) **Exceptions to reflectorized materials.** License plates issued before January 1, 1968, are not required to be treated with reflectorized materials.

(3) **Dealer license plates.** License plates issued to a dealer must contain an indication that the license plates have been issued to a vehicle dealer.

(4)(a) **Furnished.** The director shall furnish to all persons making satisfactory application for a vehicle registration:

- (i) Two identical license plates each containing the license plate number; or
- (ii) One license plate if the vehicle is a trailer, semi-trailer, camper, moped, collector vehicle, horseless carriage, or motorcycle.

(b) The director may adopt types of license plates to be used as long as the license plates are legible.

(5)(a) **Display.** License plates must be:

- (i) Attached conspicuously at the front and rear of each vehicle if two license plates have been issued;
- (ii) Attached to the rear of the vehicle if one license plate has been issued;
- (iii) Kept clean and be able to be plainly seen and read at all times; and
- (iv) Attached in a horizontal position at a distance of not more than four feet from the ground.

(b) The Washington state patrol may grant exceptions to this subsection if the body construction of the vehicle makes compliance with this section impossible.

(6) **Change of license classification.** A person who has altered a vehicle that makes the current license plate or plates invalid for the vehicle's use shall:

- (a) Surrender the current license plate or plates to the department, county auditor or other agent, or subagent appointed by the director;
- (b) Apply for a new license plate or plates; and
- (c) Pay a change of classification fee required under RCW 46.17.310.

(7) **Unlawful acts.** It is unlawful to:

(a) Display a license plate or plates on the front or rear of any vehicle that were not issued by the director for the vehicle;

(b) Display a license plate or plates on any vehicle that have been changed, altered, or disfigured, or have become illegible;

(c) Use holders, frames, or other materials that change, alter, or make a license plate or plates illegible. License plate frames may be used on license plates only if the frames do not obscure license tabs or identifying letters or numbers on the plates and the license plates can be plainly seen and read at all times;

(d) Operate a vehicle unless a valid license plate or plates are attached as required under this section;

(e) Transfer a license plate or plates issued under this chapter between two or more vehicles without first making application to transfer the license plates. A violation of this subsection (7)(e) is a traffic infraction subject to a fine not to exceed five hundred dollars. Any law enforcement agency that determines that a license plate or plates have been transferred between two or more vehicles shall confiscate the license plate or plates and return them to the department for nullification along with full details of the reasons for confiscation. Each vehicle identified in the transfer will be issued a new license plate or plates upon application by the owner or owners and the payment of full fees and taxes; or

(f) Fail, neglect, or refuse to endorse the registration certificate and deliver the license plate or plates to the purchaser or transferee of the vehicle, except as authorized under this section.

(8) **Transfer.** (a) Standard issue license plates follow the vehicle when ownership of the vehicle changes unless the registered owner wishes to retain the license plates and transfer them to a replacement vehicle of the same use. A registered owner wishing to keep standard issue license plates shall pay the license plate transfer fee required under RCW 46.17.200(1)(c) when applying for license plate transfer.

(b) Special license plates and personalized license plates may be treated in the same manner as described in (a) of this subsection unless otherwise limited by law.

(c) License plates issued to the state or any county, city, town, school district, or other political subdivision entitled to exemption as provided by law may be treated in the same manner as described in (a) of this subsection.

(9) **Replacement.** (a) An owner or the owner's authorized representative shall apply for a replacement license plate or plates if the current license plate or plates assigned to the vehicle have been lost, defaced, or destroyed, or if one or both plates have become so illegible or are in such a condition as to be difficult to distinguish. An owner or the owner's authorized representative may apply for a replacement license plate or plates at any time the owner chooses.

(b) The application for a replacement license plate or plates must:

- (i) Be on a form furnished or approved by the director; and
- (ii) Be accompanied by the fee required under RCW 46.17.200(1)(a).

(c) The department shall not require the payment of any fee to replace a license plate or plates for vehicles owned,

rented, or leased by foreign countries or international bodies to which the United States government is a signatory by treaty.

(10) **Periodic replacement.** License plates must be replaced periodically to ensure maximum legibility and reflectivity. The department shall:

(a) Use empirical studies documenting the longevity of the reflective materials used to make license plates;

(b) Determine how frequently license plates must be replaced; and

(c) Offer to owners the option of retaining the current license plate number when obtaining replacement license plates for the fee required in RCW 46.17.200(1)(b).

(11) **Periodic replacement—Exceptions.** The following license plates are not required to be periodically replaced as required in subsection (10) of this section:

(a) Horseless carriage license plates issued under RCW 46.18.255 before January 1, 1987;

(b) Congressional Medal of Honor license plates issued under RCW 46.18.230;

(c) License plates for commercial motor vehicles with a gross weight greater than twenty-six thousand pounds.

(12) **Rules.** The department may adopt rules to implement this section.

(13) **Tabs or emblems.** The director may issue tabs or emblems to be attached to license plates or elsewhere on the vehicle to signify initial registration and renewals. Renewals become effective when tabs or emblems have been issued and properly displayed on license plates. [2011 c 171 § 46; 2010 c 161 § 422.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.16A.210 Emblems—Material, display requirements. License plate emblems and veteran remembrance emblems must use fully reflectorized materials designed to provide visibility at night. Emblems must be designed to be affixed to a license plate by pressure-sensitive adhesive so as not to obscure the plate identification numbers or letters.

Emblems must be issued for display on the front and rear license plates. Single emblems must be issued for vehicles authorized to display one license plate. [2011 c 171 § 47; 1990 c 250 § 8. Formerly RCW 46.16.327.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

46.16A.215 Military emblems—Fees. (1) The director may adopt fees to be charged by the department for emblems issued by the department under RCW 46.18.295.

(2) The fee for each remembrance emblem issued under RCW 46.18.295 shall be in an amount sufficient to offset the costs of production of remembrance emblems and the administration of that program by the department plus an amount for use by the department of veterans affairs, not to exceed a total fee of twenty-five dollars per emblem.

(3) The veterans' emblem account is created in the custody of the state treasurer. All receipts by the department

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from the issuance of remembrance emblems under RCW 46.18.295 shall be deposited into this fund. Expenditures from the fund may be used only for the costs of production of remembrance emblems and administration of the program by the department of licensing, with the balance used only by the department of veterans affairs for projects that pay tribute to those living veterans and to those who have died defending freedom in our nation's wars and conflicts and for the upkeep and operations of existing memorials, as well as for planning, acquiring land for, and constructing future memorials. Only the director of licensing, the director of veterans affairs, or their designees may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [2011 c 171 § 48; 1994 c 194 § 5; 1990 c 250 § 9. Formerly RCW 46.16.332.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

46.16A.405 Campers, mopeds, and wheelchair conveyances. This chapter applies to the following:

(1) Campers are considered vehicles for the purposes of vehicle registration and license plate display, except for campers held as part of a manufacturer's or dealer's inventory that:

(a) Are unoccupied at all times;

(b) Have been issued a dated demonstration permit that is valid for no more than seventy-two hours. The permit must be carried in the vehicle on which the camper is mounted; and

(c) Are mounted on a properly registered vehicle.

(2) Mopeds are considered vehicles for the purposes of vehicle registration and license plate display. The department, county auditor or other agent, or subagent appointed by the director shall charge the fee required under RCW 46.17.200(1)(a) when issuing an original moped license plate. Mopeds are exempt from personal property taxes and vehicle excise taxes imposed under chapter 82.44 RCW.

(3) Wheelchair conveyances are considered vehicles for the purposes of vehicle registration and license plate display. Wheelchair conveyances that do not meet braking equipment requirements described in RCW 46.37.340 must be registered as mopeds. [2011 c 171 § 49; 2010 c 161 § 437.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.16A.435 Off-road motorcycles—Declaration required—Contents. (*Effective January 1, 2012.*) (1) The department shall establish a declaration subject to the requirements of RCW 9A.72.085, which must be submitted by an off-road motorcycle owner when applying for on-road registration of the off-road motorcycle. In order to be registered for on-road use, an off-road motorcycle must travel on two wheels with a seat designed to be straddled by the operator and with handlebar-type steering control.

(2) Registration for on-road use of an off-road motorcycle is prohibited for dune buggies, snowmobiles, trimobiles, mopeds, pocket bikes, motor vehicles registered by the

department, side-by-sides, utility vehicles, grey-market vehicles, off-road three-wheeled vehicles, and, as determined by the department, any other vehicles that were not originally certified by the manufacturer for use on public roads.

(3) The declaration must include the following:

(a) Documentation of a safety inspection to be completed by a licensed motorcycle dealer or repair shop in the state of Washington that must outline the vehicle information and certify that all off-road to on-road motorcycle equipment as required under RCW 46.61.705 meets the requirements outlined in state and federal law;

(b) Documentation that the licensed motorcycle dealer or repair shop did not charge more than one hundred dollars per safety inspection and that the entire safety inspection fee is paid directly and only to the licensed motorcycle dealer or repair shop;

(c) A statement that the licensed motorcycle dealer or repair shop is entitled to the full amount charged for the motorcycle safety inspection;

(d) A vehicle identification number verification that must be completed by a licensed motorcycle dealer or repair shop in the state of Washington; and

(e) A release signed by the owner of the off-road motorcycle and verified by the department, county auditor or other agent, or subagent appointed by the director that releases the state from any liability and outlines that the owner understands that the original off-road motorcycle was not manufactured for on-road use and that it has been modified for use on public roads.

(4) The department must track off-road motorcycles in a separate registration category for reporting purposes. [2011 c 121 § 3.]

Effective date—2011 c 121: See note following RCW 46.04.363.

46.16A.445 Street rod or custom vehicles. A vehicle registration issued to a street rod or custom vehicle under this chapter need not be an initial vehicle registration for that vehicle. [2011 c 114 § 5.]

Effective date—2011 c 114: See note following RCW 46.04.572.

46.16A.455 Trucks, buses, and for hire vehicles based on gross weight. (1) **Auto stage, bus, for hire vehicle - more than six seats.** The declared gross weight for an auto stage, bus, or for hire vehicle, except taxicabs, with a seating capacity of more than six is determined by:

(a) Multiplying the number of seats, including the driver, times one hundred fifty pounds per seat;

(b) Adding the scale weight to the product derived in (a) of this subsection; and

(c) Locating the sum derived in (b) of this subsection in the registration fee based on declared gross weight table provided in RCW 46.17.355 and rounding up to the next greater weight.

(2) **Motor truck, road tractor, truck, truck tractor-sufficient declared gross weight required.** The declared gross weight for a motor truck, road tractor, truck, or truck tractor must have a sufficient declared gross weight, as required under chapter 46.44 RCW, to cover:

(a) Its empty scale weight plus the maximum load it will carry; and

(b) The empty scale weight of any trailer it will tow and the maximum load that the trailer will carry. The declared gross weight of the motor vehicle does not need to include the trailer if:

(i) The empty scale weight of the trailer and the maximum load the trailer will carry does not exceed four thousand pounds; or

(ii) The trailer is for personal use, such as a horse trailer, travel trailer, or utility trailer.

(3) **Motor truck, road tractor, truck, and truck tractor-exceeding six thousand pounds empty scale weight.** Every truck, motor truck, truck tractor, and tractor exceeding six thousand pounds empty scale weight registered under this chapter or chapter 46.87 RCW must be licensed for not less than one hundred fifty percent of its empty weight unless:

(a) The amount would exceed the legal limits described in RCW 46.44.041 or 46.44.042, in which event the vehicle must be licensed for the maximum weight authorized for the vehicle; or

(b) The vehicle is a fixed load vehicle.

(4) **Increasing declared gross weight.** The following provisions apply when increasing declared gross weight for a motor vehicle licensed under this section:

(a) The declared gross weight must be increased to the end of the current registration year when the declared gross weight remains at 12,000 pounds or less.

(b) For motor vehicles increasing to a declared gross weight of 14,000 pounds or more, the declared gross weight must be increased, at a minimum, to the expiration of the current declared gross weight license.

(c) The new license fee is one-twelfth of the annual license fee listed in RCW 46.17.355 for each of the number of months remaining in the registration period. The department shall:

(i) Apply credit to any gross weight license fees already paid for the full months remaining in the registration period;

(ii) Charge the monthly declared gross weight license fee required under RCW 46.17.360, in addition to any other fees or taxes due; and

(iii) Not apply credit to monthly declared gross weight license fees already used.

(d) (c) of this subsection does not apply to motor vehicles described in (a) of this subsection.

(e) Upon surrender of the current registration certificate or cab card, credit must be applied as described in (c) of this subsection.

(5) **Monthly license—Authorized.** The annual license fees required in RCW 46.17.355 for any motor vehicle or combination of vehicles having a declared gross weight of twelve thousand one pounds or more may be paid for any full registration month or months at one-twelfth of the annual license fee plus the monthly declared gross weight license fee required in RCW 46.17.360. This sum must be multiplied by the number of full months for which the fees are paid if for less than a full year.

(6) **Monthly license—Penalty.** Operation of a vehicle registered under subsection (5) of this section by any person upon the public highways after the expiration of the monthly license is a traffic infraction. The person shall pay a license fee for the vehicle involved covering an entire registration year's operation, less the fees for any registration month or

months of the registration year already paid. If, within five days, a license fee for a full registration year has not been paid as required, the Washington state patrol, county sheriff, or city police shall impound the vehicle until the fees have been paid.

(7) **Camper, school bus—Exemptions.** (a) The weight of a camper must not be included when determining declared gross weight.

(b) Motor vehicles used for the transportation of school children or teachers to and from school and other school activities are exempt from subsection (1) of this section and the seating capacity fee provided in RCW 46.17.340. If the motor vehicle is used for any other purpose, it must be appropriately registered as required under this chapter.

(8) **Credit for unused license fee.** A registered owner of a motor vehicle with a declared gross weight of more than twelve thousand pounds may obtain credit for the unused portion of the license fee paid or transfer the credit to a new owner under the following conditions:

(a) The motor vehicle must have been recently sold or transferred to another owner, is no longer in the possession of the owner, or is reported destroyed under RCW 46.12.600;

(b) The available credit must be fifteen dollars or more;

(c) Credit will be given for any unused months of the declared gross weight license already purchased at the rate of one-twelfth for each full or partial month of registration;

(d) Credit only applies to license fees due under RCW 46.17.355 for the registration year for which it was purchased;

(e) Credit as used in this section may not be refunded. [2011 c 171 § 50; 2010 c 161 § 419; 2005 c 314 § 204. Prior: 2003 c 361 § 201; 2003 c 1 § 3 (Initiative Measure No. 776, approved November 5, 2002); 1994 c 262 § 8; 1993 sp.s. c 23 § 60; prior: 1993 c 123 § 5; 1993 c 102 § 1; 1990 c 42 § 105; 1989 c 156 § 1; prior: 1987 1st ex.s. c 9 § 4; 1987 c 244 § 3; 1986 c 18 § 4; 1985 c 380 § 15; 1975-'76 2nd ex.s. c 64 § 1; 1969 ex.s. c 281 § 54; 1967 ex.s. c 118 § 1; 1967 ex.s. c 83 § 56; 1961 ex.s. c 7 § 11; 1961 c 12 § 46.16.070; prior: 1957 c 273 § 1; 1955 c 363 § 2; prior: 1951 c 269 § 9; 1950 ex.s. c 15 § 1, part; 1939 c 182 § 3, part; 1937 c 188 § 17, part; 1931 c 140 § 1, part; 1921 c 96 § 15, part; 1919 c 46 § 1, part; 1917 c 155 § 10, part; 1915 c 142 § 15, part; Rem. Supp. 1949 § 6312-17, part; RRS § 6326, part. Formerly RCW 46.16.070.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective dates—2005 c 314 §§ 110 and 201-206: See note following RCW 46.68.035.

Application—2005 c 314 §§ 201-206, 301, and 302: See note following RCW 46.68.035.

Part headings not law—2005 c 314: See note following RCW 46.68.035.

Application—2003 c 361 § 201: "Section 201 of this act is effective with registrations that are due or will become due August 1, 2003, and thereafter." [2003 c 361 § 704.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Policies and purposes—2003 c 1 (Initiative Measure No. 776): "This measure would require license tab fees to be \$30 per year for motor vehicles

and light trucks and would repeal certain government-imposed charges, including excise taxes and fees, levied on motor vehicles. Politicians promised "\$30 license tabs are here to stay" and promised any increases in vehicle-related taxes, fees and surcharges would be put to a public vote. Politicians should keep their promises. As long as taxpayers must pay incredibly high sales taxes when buying motor vehicles (meaning state and local governments receive huge windfalls of sales tax revenue from these transactions), the people want license tab fees to not exceed the promised \$30 per year. Without this follow-up measure, "tab creep" will continue until license tab fees are once again obscenely expensive, as they were prior to Initiative 695. The people want a public vote on any increases in vehicle-related taxes, fees and surcharges to ensure increased accountability. Voters will require more cost-effective use of existing revenues and fundamental reforms before approving higher charges on motor vehicles (such changes may remove the need for any increases). Also, dramatic changes to transportation plans and programs previously presented to voters must be resubmitted. This measure provides a strong directive to all taxing districts to obtain voter approval before imposing taxes, fees and surcharges on motor vehicles. However, if the legislature ignores this clear message, a referendum will be filed to protect the voters' rights. Politicians should just do the right thing and keep their promises." [2003 c 1 § 1 (Initiative Measure No. 776, approved November 5, 2002).]

Construction—2003 c 1 (Initiative Measure No. 776): "The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act." [2003 c 1 § 9 (Initiative Measure No. 776, approved November 5, 2002).]

Intent—2003 c 1 (Initiative Measure No. 776): "The people have made clear through the passage of numerous initiatives and referenda that taxes need to be reasonable and tax increases should always be a last resort. However, politicians throughout the state of Washington continue to ignore these repeated mandates.

The people expect politicians to keep their promises. The legislative intent of this measure is to ensure that they do.

Politicians are reminded:

(1) Washington voters want license tab fees to be \$30 per year for motor vehicles unless voters authorize higher vehicle-related charges at an election.

(2) All political power is vested in the people, as stated in Article I, section 1 of the Washington state Constitution.

(3) The first power reserved by the people is the initiative, as stated in Article II, section 1 of the Washington state Constitution.

(4) When voters approve initiatives, politicians have a moral, ethical, and constitutional obligation to fully implement them. When politicians ignore this obligation, they corrupt the term "public servant."

(5) Any attempt to violate the clear intent and spirit of this measure undermines the trust of the people in their government and will increase the likelihood of future tax limitation measures." [2003 c 1 § 11 (Initiative Measure No. 776, approved November 5, 2002).]

Severability—Savings—2003 c 1 (Initiative Measure No. 776): See note following RCW 81.104.160.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Additional notes found at www.leg.wa.gov

46.16A.510 Immunity from liability for issuing a vehicle registration or license plates to nonroadworthy vehicle. The director, the state of Washington, and its political subdivisions are immune from civil liability arising from the issuance of a vehicle registration or license plates to a nonroadworthy vehicle. [2011 c 171 § 51; 1986 c 186 § 5. Formerly RCW 46.16.012.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.16A.530 Unlawful to carry passengers for hire without vehicle registration. It is unlawful for the owner or operator of any vehicle not registered annually for hire or as an auto stage and for which additional seating capacity fee as required by this chapter has not been paid, to carry passengers therein for hire. [2011 c 171 § 52; 1961 c 12 §

46.16.180. Prior: 1937 c 188 § 20; RRS § 6312-20. Formerly RCW 46.16.180.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.16A.540 Overloading registered capacity—Additional registration—Penalties—Exceptions. It is a traffic infraction for any person to operate, or cause, permit, or suffer to be operated upon a public highway of this state any bus, auto stage, motor truck, truck tractor, or tractor, with passengers, or with a maximum gross weight, in excess of that for which the motor vehicle or combination is registered.

Any person who operates or causes to be operated upon a public highway of this state any motor truck, truck tractor, or tractor with a maximum gross weight in excess of the maximum gross weight for which the vehicle is registered shall be deemed to have set a new maximum gross weight and shall, in addition to any penalties otherwise provided, be required to purchase a new registration covering the new maximum gross weight, and any failure to secure such new registration is a traffic infraction. No such person may be permitted or required to purchase the new registration for a gross weight or combined gross weight which would exceed the maximum gross weight or combined gross weight allowed by law. This section does not apply to for hire vehicles, buses, or auto stages operating principally within cities and towns. [2011 c 171 § 53; 1986 c 18 § 13; 1979 ex.s. c 136 § 47; 1961 c 12 § 46.16.140. Prior: 1955 c 384 § 16; 1951 c 269 § 18; 1937 c 188 § 25, part; RRS § 6312-25, part. Formerly RCW 46.16.140.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

46.16A.545 Overloading registered capacity—Penalties. Any person violating any of the provisions of RCW 46.16A.540 shall, upon a first offense, pay a penalty of not less than twenty-five dollars nor more than fifty dollars; upon a second offense pay a penalty of not less than fifty dollars nor more than one hundred dollars, and in addition the court may suspend the registration certificate of the vehicle for not more than thirty days; upon a third and subsequent offense pay a penalty of not less than one hundred dollars nor more than two hundred dollars, and in addition the court shall suspend the registration certificate of the vehicle for not less than thirty days nor more than ninety days.

Upon ordering the suspension of any registration certificate, the court or judge shall forthwith secure the registration certificate and mail it to the director. [2011 c 171 § 54; 1979 ex.s. c 136 § 48; 1975-'76 2nd ex.s. c 64 § 5; 1961 c 12 § 46.16.145. Prior: 1951 c 269 § 19; 1937 c 188 § 25, part; RRS § 6312-25, part. Formerly RCW 46.16.145.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

46.16A.900 Severability—1973 1st ex.s. c 132. If any provision of this 1973 amendatory act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder

of the amendatory act and the applicability thereof to persons and circumstances shall not be affected thereby. [1973 1st ex.s. c 132 § 24. Formerly RCW 46.16.900.]

Chapter 46.17 RCW VEHICLE FEES

Sections

46.17.040	Subagent service fees.
46.17.150	Manufactured home title transfer fee.
46.17.160	Quick title service fee. (<i>Effective January 1, 2012.</i>)
46.17.200	Reflectivity fee—Replacement fees—Moped fee—Retention fee—Transfer fees—Recovery fee for nonvehicular use.
46.17.210	Personalized license plate fees.
46.17.220	Special license plate fees. (<i>Effective until January 1, 2012.</i>)
46.17.220	Special license plate fees. (<i>Effective January 1, 2012.</i>)
46.17.230	Replacement license tab and windshield emblem fee.
46.17.315	Commercial vehicle safety enforcement fee.
46.17.355	License fees by weight.
46.17.400	Permit fees by permit type.

46.17.040 Subagent service fees. A subagent appointed by the director shall collect a service fee of:

(1) Twelve dollars for changes in a certificate of title, with or without registration renewal, or for verification of record and preparation of an affidavit of lost title other than at the time of the certificate of title application or transfer; and

(2) Five dollars for a registration renewal, issuing a transit permit, or any other service under this section. [2011 c 171 § 55; 2010 c 161 § 506.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.17.150 Manufactured home title transfer fee. Before accepting an application for a transfer of certificate of title for a new or used manufactured home as required in this title and chapter 65.20 RCW, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant to pay a fifteen dollar fee in addition to any other fees and taxes required by law. The fifteen dollar fee must be forwarded to the state treasurer, who shall deposit the fee in the manufactured home installation training account created in RCW 43.22A.100. [2011 c 158 § 4; 2010 c 161 § 510.]

Transfer of residual funds to manufactured home installation training account—2011 c 158: See note following RCW 43.22A.100.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.17.160 Quick title service fee. (*Effective January 1, 2012.*) Before accepting an application for a quick title of a vehicle under RCW 46.12.555, the department, participating county auditor or other agent, or subagent appointed by the director shall require the applicant to pay a fifty dollar quick title service fee in addition to any other fees and taxes required by law. The quick title service fee must be distributed under RCW 46.68.025. [2011 c 326 § 2.]

Application—Effective date—2011 c 326: See notes following RCW 46.12.555.

46.17.200 Reflectivity fee—Replacement fees—Moped fee—Retention fee—Transfer fees—Recovery fee for nonvehicular use. (1) In addition to all other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge:

(a) The following license plate fees for each license plate, unless the owner or type of vehicle is exempt from payment:

FEE TYPE	FEE	DISTRIBUTION
Reflectivity	\$ 2.00	RCW 46.68.070
Replacement	\$10.00	RCW 46.68.070
Replacement, motorcycle	\$ 2.00	RCW 46.68.070
Original issue, moped	\$ 1.50	RCW 46.68.070

(b) A license plate retention fee, as required under *RCW 46.16A.200(10)(a)(iii), of twenty dollars if the owner wishes to retain the current license plate number upon license plate replacement, unless the owner or type of vehicle is exempt from payment. The twenty dollar fee must be deposited in the multimodal transportation account created in RCW 47.66.070.

(c) A ten dollar license plate transfer fee, as required under RCW 46.16A.200(8)(a), when transferring standard issue license plates from one vehicle to another, unless the owner or type of vehicle is exempt from payment. The ten dollar license plate transfer fee must be deposited in the motor vehicle fund created in RCW 46.68.070.

(d) Former prisoner of war license plates, as described in RCW 46.18.235, may be transferred to a replacement vehicle upon payment of a five dollar license plate fee, in addition to any other fee required by law.

(2) The department may, upon request, provide license plates that have been used and returned to the department to individuals for nonvehicular use. The department may charge a fee of up to five dollars per license plate to cover costs or recovery for postage and handling. The department may waive the fee for license plates used in educational projects and may, by rule, provide standards for the fee waiver and restrictions on the number of license plates provided to any one person. The fee must be deposited in the motor vehicle fund created in RCW 46.68.070. [2011 c 171 § 56; 2010 c 161 § 518.]

***Reviser's note:** RCW 46.16A.200 was amended by 2011 c 171 § 46, changing subsection (10)(a)(iii) to subsection (10)(c).

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.17.210 Personalized license plate fees. In addition to all fees and taxes required to be paid upon application for a vehicle registration under chapter 46.16A RCW, the holder of a personalized license plate shall pay an initial fee of forty-two dollars and thirty-two dollars for each renewal. The personalized license plate fee must be distributed as provided in RCW 46.68.435. [2011 c 171 § 57; 2010 c 161 § 520.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.17.220 Special license plate fees. (Effective until January 1, 2012.) (1) In addition to all fees and taxes required to be paid upon application for a vehicle registration in chapter 46.16A RCW, the holder of a special license plate shall pay the appropriate special license plate fee as listed in this section.

PLATE TYPE	INITIAL FEE	RENEWAL FEE	DISTRIBUTED UNDER
(a) Amateur radio license	\$ 5.00	N/A	RCW 46.68.070
(b) Armed forces	\$ 40.00	\$ 30.00	RCW 46.68.425
(c) Baseball stadium	\$ 40.00	\$ 30.00	Subsection (2) of this section
(d) Collector vehicle	\$ 35.00	N/A	RCW 46.68.030
(e) Collegiate	\$ 40.00	\$ 30.00	RCW 46.68.430
(f) Endangered wildlife	\$ 40.00	\$ 30.00	RCW 46.68.425
(g) Gonzaga University alumni association	\$ 40.00	\$ 30.00	RCW 46.68.420
(h) Helping kids speak	\$ 40.00	\$ 30.00	RCW 46.68.420
(i) Horseless carriage	\$ 35.00	N/A	RCW 46.68.030
(j) Keep kids safe	\$ 45.00	\$ 30.00	RCW 46.68.425
(k) Law enforcement memorial	\$ 40.00	\$ 30.00	RCW 46.68.420
(l) Military affiliate radio system	\$ 5.00	N/A	RCW 46.68.070
(m) Professional firefighters and paramedics	\$ 40.00	\$ 30.00	RCW 46.68.420
(n) Ride share	\$ 25.00	N/A	RCW 46.68.030
(o) Share the road	\$ 40.00	\$ 30.00	RCW 46.68.420
(p) Ski & ride Washington	\$ 40.00	\$ 30.00	RCW 46.68.420
(q) Square dancer	\$ 40.00	N/A	RCW 46.68.070
(r) Washington lighthouses	\$ 40.00	\$ 30.00	RCW 46.68.420
(s) Washington state parks	\$ 40.00	\$ 30.00	RCW 46.68.425
(t) Washington's national parks	\$ 40.00	\$ 30.00	RCW 46.68.420
(u) Washington's wildlife collection	\$ 40.00	\$ 30.00	RCW 46.68.425
(v) We love our pets	\$ 40.00	\$ 30.00	RCW 46.68.420
(w) Wild on Washington	\$ 40.00	\$ 30.00	RCW 46.68.425

(2) After deducting administration and collection expenses for the sale of baseball stadium license plates, the remaining proceeds must be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund. [2011 c 171 § 58; 2010 c 161 § 521.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.17.220 Special license plate fees. (Effective January 1, 2012.) (1) In addition to all fees and taxes required to be paid upon application for a vehicle registration in chapter 46.16A RCW, the holder of a special license plate shall pay the appropriate special license plate fee as listed in this section.

PLATE TYPE	INITIAL FEE	RENEWAL FEE	DISTRIBUTED UNDER
(a) Amateur radio license	\$ 5.00	N/A	RCW 46.68.070
(b) Armed forces	\$ 40.00	\$ 30.00	RCW 46.68.425
(c) Baseball stadium	\$ 40.00	\$ 30.00	Subsection (2) of this section
(d) Collector vehicle	\$ 35.00	N/A	RCW 46.68.030
(e) Collegiate	\$ 40.00	\$ 30.00	RCW 46.68.430
(f) Endangered wildlife	\$ 40.00	\$ 30.00	RCW 46.68.425
(g) Gonzaga University alumni association	\$ 40.00	\$ 30.00	RCW 46.68.420
(h) Helping kids speak	\$ 40.00	\$ 30.00	RCW 46.68.420
(i) Horseless carriage	\$ 35.00	N/A	RCW 46.68.030
(j) Keep kids safe	\$ 45.00	\$ 30.00	RCW 46.68.425
(k) Law enforcement memorial	\$ 40.00	\$ 30.00	RCW 46.68.420
(l) Military affiliate radio system	\$ 5.00	N/A	RCW 46.68.070
(m) Music matters	\$ 40.00	\$ 30.00	RCW 46.68.420
(n) Professional firefighters and paramedics	\$ 40.00	\$ 30.00	RCW 46.68.420
(o) Ride share	\$ 25.00	N/A	RCW 46.68.030
(p) Share the road	\$ 40.00	\$ 30.00	RCW 46.68.420
(q) Ski & ride Washington	\$ 40.00	\$ 30.00	RCW 46.68.420
(r) Square dancer	\$ 40.00	N/A	RCW 46.68.070
(s) Volunteer firefighters	\$ 40.00	\$ 30.00	RCW 46.68.420
(t) Washington light-houses	\$ 40.00	\$ 30.00	RCW 46.68.420
(u) Washington state parks	\$ 40.00	\$ 30.00	RCW 46.68.425
(v) Washington's national parks	\$ 40.00	\$ 30.00	RCW 46.68.420
(w) Washington's wildlife collection	\$ 40.00	\$ 30.00	RCW 46.68.425
(x) We love our pets	\$ 40.00	\$ 30.00	RCW 46.68.420
(y) Wild on Washington	\$ 40.00	\$ 30.00	RCW 46.68.425

(2) After deducting administration and collection expenses for the sale of baseball stadium license plates, the remaining proceeds must be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund. [2011 c 229 § 3; 2011 c 225 § 2; 2011 c 171 § 58; 2010 c 161 § 521.]

Reviser's note: This section was amended by 2011 c 171 § 58, 2011 c 225 § 2, and by 2011 c 229 § 3, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 229: See note following RCW 46.18.200.

Effective date—2011 c 225: See note following RCW 46.18.200.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.17.230 Replacement license tab and windshield emblem fee. Before accepting an application for a replacement license tab or windshield emblem, the department, county auditor or other agent, or subagent appointed by the director shall charge a one dollar fee for each pair of tabs or windshield emblem. The license tab or windshield emblem replacement fee must be deposited in the motor vehicle fund created in RCW 46.68.070. [2011 c 171 § 59; 2010 c 161 § 519.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.17.315 Commercial vehicle safety enforcement fee. (1) Before accepting an application for a motor vehicle base plated in the state of Washington that is subject to highway inspections and compliance reviews by the Washington state patrol under RCW 46.32.080 or the international registration plan if base plated in a foreign jurisdiction, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant to pay a sixteen dollar commercial vehicle safety enforcement fee in addition to any other fees and taxes required by law. The sixteen dollar fee:

(a) Must be apportioned for those vehicles operating interstate and registered under the international registration plan;

(b) Does not apply to trailers; and

(c) Is not refundable when the motor vehicle is no longer subject to RCW 46.32.080.

(2) The department may deduct an amount equal to the cost of administering the program. All remaining fees must be deposited with the state treasurer and credited to the state patrol highway account of the motor vehicle fund created in RCW 46.68.070. [2011 c 171 § 60; 2010 c 161 § 524.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.17.355 License fees by weight. (1) In lieu of the vehicle license fee required under RCW 46.17.350 and before accepting an application for a vehicle registration for motor vehicles described in RCW 46.16A.455, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant, unless specifically exempt, to pay the following license fee by weight:

WEIGHT	SCHEDULE A	SCHEDULE B
4,000 pounds	\$ 38.00	\$ 38.00
6,000 pounds	\$ 48.00	\$ 48.00
8,000 pounds	\$ 58.00	\$ 58.00
10,000 pounds	\$ 60.00	\$ 60.00
12,000 pounds	\$ 77.00	\$ 77.00
14,000 pounds	\$ 88.00	\$ 88.00

16,000 pounds	\$ 100.00	\$ 100.00
18,000 pounds	\$ 152.00	\$ 152.00
20,000 pounds	\$ 169.00	\$ 169.00
22,000 pounds	\$ 183.00	\$ 183.00
24,000 pounds	\$ 198.00	\$ 198.00
26,000 pounds	\$ 209.00	\$ 209.00
28,000 pounds	\$ 247.00	\$ 247.00
30,000 pounds	\$ 285.00	\$ 285.00
32,000 pounds	\$ 344.00	\$ 344.00
34,000 pounds	\$ 366.00	\$ 366.00
36,000 pounds	\$ 397.00	\$ 397.00
38,000 pounds	\$ 436.00	\$ 436.00
40,000 pounds	\$ 499.00	\$ 499.00
42,000 pounds	\$ 519.00	\$ 609.00
44,000 pounds	\$ 530.00	\$ 620.00
46,000 pounds	\$ 570.00	\$ 660.00
48,000 pounds	\$ 594.00	\$ 684.00
50,000 pounds	\$ 645.00	\$ 735.00
52,000 pounds	\$ 678.00	\$ 768.00
54,000 pounds	\$ 732.00	\$ 822.00
56,000 pounds	\$ 773.00	\$ 863.00
58,000 pounds	\$ 804.00	\$ 894.00
60,000 pounds	\$ 857.00	\$ 947.00
62,000 pounds	\$ 919.00	\$ 1,009.00
64,000 pounds	\$ 939.00	\$ 1,029.00
66,000 pounds	\$ 1,046.00	\$ 1,136.00
68,000 pounds	\$ 1,091.00	\$ 1,181.00
70,000 pounds	\$ 1,175.00	\$ 1,265.00
72,000 pounds	\$ 1,257.00	\$ 1,347.00
74,000 pounds	\$ 1,366.00	\$ 1,456.00
76,000 pounds	\$ 1,476.00	\$ 1,566.00
78,000 pounds	\$ 1,612.00	\$ 1,702.00
80,000 pounds	\$ 1,740.00	\$ 1,830.00
82,000 pounds	\$ 1,861.00	\$ 1,951.00
84,000 pounds	\$ 1,981.00	\$ 2,071.00
86,000 pounds	\$ 2,102.00	\$ 2,192.00
88,000 pounds	\$ 2,223.00	\$ 2,313.00
90,000 pounds	\$ 2,344.00	\$ 2,434.00
92,000 pounds	\$ 2,464.00	\$ 2,554.00
94,000 pounds	\$ 2,585.00	\$ 2,675.00
96,000 pounds	\$ 2,706.00	\$ 2,796.00
98,000 pounds	\$ 2,827.00	\$ 2,917.00
100,000 pounds	\$ 2,947.00	\$ 3,037.00
102,000 pounds	\$ 3,068.00	\$ 3,158.00
104,000 pounds	\$ 3,189.00	\$ 3,279.00
105,500 pounds	\$ 3,310.00	\$ 3,400.00

(2) Schedule A applies to vehicles either used exclusively for hauling logs or that do not tow trailers. Schedule B

applies to vehicles that tow trailers and are not covered under Schedule A.

(3) If the resultant gross weight is not listed in the table provided in subsection (1) of this section, it must be increased to the next higher weight.

(4) The license fees provided in subsection (1) of this section are in addition to the filing fee required under RCW 46.17.005 and any other fee or tax required by law.

(5) The license fee based on declared gross weight as provided in subsection (1) of this section must be distributed under RCW 46.68.035. [2011 c 171 § 61; 2010 c 161 § 530.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.17.400 Permit fees by permit type. (1) Before accepting an application for one of the following permits, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant to pay the following permit fee by permit type in addition to any other fee or tax required by law:

PERMIT TYPE	FEE	AUTHORITY	DISTRIBUTION
(a) Dealer temporary	\$15.00	RCW 46.16A.300	RCW 46.68.030
(b) Department temporary	\$.50	RCW 46.16A.305	RCW 46.68.450
(c) Farm vehicle trip	\$6.25	RCW 46.16A.330	RCW 46.68.035
(d) Nonresident military	\$10.00	RCW 46.16A.340	RCW 46.68.070
(e) Nonresident temporary snowmobile	\$5.00	RCW 46.10.450	RCW 46.68.350
(f) Special fuel trip	\$30.00	RCW 82.38.100	RCW 46.68.460
(g) Temporary ORV use	\$7.00	RCW 46.09.430	RCW 46.68.045
(h) Vehicle trip	\$25.00	RCW 46.16A.320	RCW 46.68.455

(2) Permit fees as provided in subsection (1) of this section are in addition to the filing fee required under RCW 46.17.005, except an additional filing fee may not be charged for:

- (a) Dealer temporary permits;
- (b) Special fuel trip permits; and
- (c) Vehicle trip permits.

(3) Five dollars of the fifteen dollar dealer temporary permit fee provided in subsection (1)(a) of this section must be credited to the payment of vehicle license fees at the time application for registration is made. The remainder must be deposited to the state patrol highway account created in RCW 46.68.030. [2011 c 171 § 62; 2010 c 161 § 535.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 46.18 RCW SPECIAL LICENSE PLATES

Sections

46.18.010 Application.
46.18.020 Rules.

- 46.18.030 Repealed.
- 46.18.050 Department duties—Applications, financial reports.
- 46.18.060 Department duties continued—Moratorium on issuance of special license plates *(as amended by 2011 c 171)*.
- 46.18.060 Department duties continued—Moratorium on issuance of special license plates *(as amended by 2011 c 225)*. *(Effective January 1, 2012.)*
- 46.18.060 Department duties continued—Moratorium on issuance of special license plates *(as amended by 2011 c 229)*. *(Effective January 1, 2012.)*
- 46.18.060 Department duties continued—Moratorium on issuance of special license plates *(as amended by 2011 c 367)*.
- 46.18.110 Application requirements.
- 46.18.130 Disposition of revenues.
- 46.18.200 Department-approved plate types. *(Effective until January 1, 2012.)*
- 46.18.200 Department-approved plate types. *(Effective January 1, 2012.)*
- 46.18.215 Baseball stadium license plates.
- 46.18.220 Collector vehicle license plates.
- 46.18.2201 Collector vehicle license plates—Vehicle information and identification. *(Effective January 1, 2012.)*
- 46.18.225 Collegiate license plates.
- 46.18.230 Congressional medal of honor license plates.
- 46.18.235 Disabled American veteran or former prisoner of war license plates.
- 46.18.255 Horseless carriage license plates.
- 46.18.270 Pearl Harbor survivor license plates.
- 46.18.280 Purple heart license plates.
- 46.18.285 Ride share license plates.
- 46.18.290 Square dancer license plates.
- 46.18.295 Veterans and military personnel emblems.

46.18.010 Application. Persons applying to the department for special license plates shall apply on forms obtained from the department and in accordance with RCW 46.16A.040. The applicant shall provide all information as is required by the department in order to determine the applicant's eligibility for the special license plates. [2011 c 171 § 63; 1997 c 291 § 7; 1990 c 250 § 3. Formerly RCW 46.16.309.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

46.18.020 Rules. The director shall adopt rules to implement this chapter, including the setting of fees. [2011 c 171 § 64; 2010 c 161 § 631; 1990 c 250 § 10. Formerly RCW 46.16.335.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

46.18.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

46.18.050 Department duties—Applications, financial reports. The department shall:

(1) Process special license plate applications and confirm that the sponsoring organization has submitted all required documentation. If an incomplete application is received, the department must return it to the sponsoring organization; and

(2) Compile the annual financial reports submitted by sponsoring organizations with active special license plate series. [2011 c 171 § 65. Prior: 2010 1st sp.s. c 7 § 93; 2010 c 161 § 603; 2005 c 319 § 118; 2003 c 196 § 102. Formerly RCW 46.16.715.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Part headings not law—2003 c 196: See note following RCW 46.18.005.

46.18.060 Department duties continued—Moratorium on issuance of special license plates *(as amended by 2011 c 171)*. (1) ~~(The creation of the board does not in any way preclude the authority of the legislature to independently propose and enact special license plate legislation.~~

(2)) The ~~((board))~~ department must review and either approve or reject special license plate applications submitted by sponsoring organizations.

~~(((3)))~~ (2) Duties of the ~~((board))~~ department include, but are not limited to, the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the senate and house transportation committees;

(b) Report annually to the senate and house of representatives transportation committees on the special license plate applications that were considered by the ~~((board))~~ department;

(c) Issue approval and rejection notification letters to sponsoring organizations, ~~((the department,))~~ the chairs of the senate and house of representatives transportation committees, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application; and

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The ~~((board))~~ department may submit a recommendation to discontinue a special plate series to the chairs of the senate and house of representatives transportation committees ~~(and~~

~~((e))~~ Provide policy guidance and directions to the department concerning the adoption of rules necessary to limit the number of special license plates for which an organization or a governmental entity may apply).

~~(((4)))~~ (3) Except as provided in RCW 46.18.245, in order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, 2011. During this period of time, ~~((the special license plate review board created in RCW 46.16.705 and))~~ the department ~~((are))~~ is prohibited from accepting, reviewing, processing, or approving any applications. Additionally, a special license plate may not be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the former special license plate review board before February 15, 2005. [2011 c 171 § 66. Prior: 2010 1st sp.s. c 7 § 94; 2010 c 161 § 604; 2009 c 470 § 710; 2008 c 72 § 2; 2007 c 518 § 711; prior: 2005 c 319 § 119; 2005 c 210 § 7; 2003 c 196 § 103. Formerly RCW 46.16.725.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.18.060 Department duties continued—Moratorium on issuance of special license plates *(as amended by 2011 c 225)*. *(Effective January 1, 2012.)* (1) ~~(The creation of the board does not in any way preclude the authority of the legislature to independently propose and enact special license plate legislation.~~

(2)) The ~~((board))~~ department must review and either approve or reject special license plate applications submitted by sponsoring organizations.

~~(((3)))~~ (2) Duties of the ~~((board))~~ department include but are not limited to the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the ~~((senate and house transportation committees))~~ joint transportation committee;

(b) Report annually to the ~~((senate and house of representatives transportation committees))~~ joint transportation committee on the special license plate applications that were considered by the ~~((board))~~ department;

(c) Issue approval and rejection notification letters to sponsoring organizations, ~~((the department,))~~ the ~~((chairs of the senate and house of representatives transportation committees))~~ joint transportation committee, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application; and

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The ~~((board))~~ department may submit a recommendation to discontinue a special plate series to the ~~((chairs of the senate and house of representatives transportation committees; and~~

~~(e) Provide policy guidance and directions to the department concerning the adoption of rules necessary to limit the number of special license plates for which an organization or a governmental entity may apply))~~ joint transportation committee.

~~((4))~~ (3) Except as provided in RCW 46.18.245, in order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, 2011. During this period of time, ~~((the special license plate review board created in RCW 46.16.705 and))~~ the department ~~((are))~~ is prohibited from accepting, reviewing, processing, or approving any applications. Additionally, a special license plate may not be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the former special license plate review board before February 15, 2005.

(4) The volunteer firefighters license plates created under RCW 46.18.200 are exempt from the requirements of subsection (3) of this section. [2011 c 225 § 4. Prior: 2010 1st sp.s. c 7 § 94; 2010 c 161 § 604; 2009 c 470 § 710; 2008 c 72 § 2; 2007 c 518 § 711; prior: 2005 c 319 § 119; 2005 c 210 § 7; 2003 c 196 § 103. Formerly RCW 46.16.725.]

Effective date—2011 c 225: See note following RCW 46.18.200.

46.18.060 Department duties continued—Moratorium on issuance of special license plates (as amended by 2011 c 229). (Effective January 1, 2012.) (1) ~~((The creation of the board does not in any way preclude the authority of the legislature to independently propose and enact special license plate legislation.~~

~~((2))~~ The ~~((board))~~ department must review and either approve or reject special license plate applications submitted by sponsoring organizations.

~~((3))~~ (2) Duties of the ~~((board))~~ department include, but are not limited to, the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the ~~((senate and house transportation committees))~~ joint transportation committee;

(b) Report annually to the ~~((senate and house of representatives transportation committees))~~ joint transportation committee on the special license plate applications that were considered by the ~~((board))~~ department;

(c) Issue approval and rejection notification letters to sponsoring organizations, ~~((the department,))~~ the ~~((chairs of the senate and house of representatives transportation committees))~~ joint transportation committee, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application; and

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The ~~((board))~~ department may submit a recommendation to discontinue a special plate series to the ~~((chairs of the senate and house of representatives transportation committees; and~~

~~(e) Provide policy guidance and directions to the department concerning the adoption of rules necessary to limit the number of special license plates for which an organization or a governmental entity may apply))~~ joint transportation committee.

~~((4))~~ (3) Except as provided in RCW 46.18.245, in order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, 2011. During this period of time, ~~((the special license plate review board created in RCW 46.16.705 and))~~ the department ~~((are))~~ is prohibited from accepting, reviewing, processing, or approving any applications. Additionally, a special license plate may not be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the former special license plate review board before February 15, 2005.

(4) The Music Matters license plates created under RCW 46.18.200 are exempt from the requirements of subsection (3) of this section. [2011 c 229 § 5. Prior: 2010 1st sp.s. c 7 § 94; 2010 c 161 § 604; 2009 c 470 § 710; 2008 c 72 § 2; 2007 c 518 § 711; prior: 2005 c 319 § 119; 2005 c 210 § 7; 2003 c 196 § 103. Formerly RCW 46.16.725.]

Effective date—2011 c 229: See note following RCW 46.18.200.

46.18.060 Department duties continued—Moratorium on issuance of special license plates (as amended by 2011 c 367). (1) The department must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(2) Duties of the department include, but are not limited to, the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the ~~((senate and house transportation committees))~~ joint transportation committee;

(b) Report annually to the ~~((senate and house of representatives transportation committees))~~ joint transportation committee on the special license plate applications that were considered by the department;

(c) Issue approval and rejection notification letters to sponsoring organizations, the department, the ~~((chairs of the senate and house of representatives transportation committees))~~ executive committee of the joint transportation committee, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application; and

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The department may submit a recommendation to discontinue a special plate series to the ~~((chairs of the senate and house of representatives transportation committees))~~ executive committee of the joint transportation committee.

(3) Except as provided in RCW 46.18.245, in order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, ~~((2011))~~ 2013. During this period of time, the department is prohibited from accepting, reviewing, processing, or approving any applications. Additionally, a special license plate may not be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the former special license plate review board before February 15, 2005. [2011 c 367 § 703. Prior: 2010 1st sp.s. c 7 § 94; 2010 c 161 § 604; 2009 c 470 § 710; 2008 c 72 § 2; 2007 c 518 § 711; prior: 2005 c 319 § 119; 2005 c 210 § 7; 2003 c 196 § 103. Formerly RCW 46.16.725.]

Reviser's note: RCW 46.18.060 was amended four times during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2011 c 367 §§ 703, 704, 716, and 719: "Sections 703, 704, 716, and 719 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2011." [2011 c 367 § 1103.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Part headings not law—2003 c 196: See note following RCW 46.18.005.

46.18.110 Application requirements. (1) A sponsoring organization meeting the requirements of RCW 46.18.100, applying for the creation of a special license plate must, on an application supplied by the department, provide the minimum application requirements in subsection (2) of this section.

(2) The sponsoring organization shall:

(a) Submit prepayment of all start-up costs associated with the creation and implementation of the special license plate in an amount determined by the department. The department shall place this money into the special license plate applicant trust account created under RCW 46.68.380;

(b) Provide a proposed license plate design;

(c) Provide a marketing strategy outlining short and long-term marketing plans for each special license plate and a financial analysis outlining the anticipated revenue and the planned expenditures of the revenues derived from the sale of the special license plate;

(d) Provide a signature of a legislative sponsor and proposed legislation creating the special license plate;

(e) Provide proof of organizational qualifications as determined by the department as provided for in RCW 46.18.100;

(f) Provide signature sheets that include signatures from individuals who intend to purchase the special license plate and the number of plates each individual intends to purchase. The sheets must reflect a minimum of three thousand five hundred intended purchases of the special license plate.

(3) After an application is approved by the department, the application need not be reviewed again for a period of three years. [2011 c 171 § 67. Prior: 2010 1st sp.s. c 7 § 95; 2010 c 161 § 606; 2005 c 210 § 8; 2003 c 196 § 301. Formerly RCW 46.16.745.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Part headings not law—2003 c 196: See note following RCW 46.18.005.

46.18.130 Disposition of revenues. (1) Revenues generated from the sale of special license plates for those sponsoring organizations who used the application process in RCW 46.68.110 must be deposited into the motor vehicle fund created in RCW 46.68.070 until the department determines that the state’s implementation costs have been fully reimbursed.

(2) When it is determined that the state has been fully reimbursed the department must notify the house of representatives and senate transportation committees, the sponsoring organization, and the state treasurer, and begin distributing the revenue as otherwise provided by law.

(3) If reimbursement does not occur within two years from the date the special license plate is first offered for sale to the public, the special license plate series must be placed in probationary status for a period of one year from that date. If the state is still not fully reimbursed for its implementation costs after the one-year probation, the special license plate series must be discontinued immediately. Special license plates issued before discontinuation are valid until replaced under RCW 46.16A.200(10).

(4) The department shall:

(a) Provide the special license plate applicant with a written receipt for the payment; and

(b) Maintain a record of each special license plate applicant trust account deposit including, but not limited to, the name and address of each special license plate applicant

whose funds are being deposited, the amount paid, and the date of the deposit.

(5) After the department receives written notice that the special license plate applicant’s application has been approved by the legislature, the director shall request that the money be transferred to the motor vehicle fund created in RCW 46.68.070.

(6) After the department receives written notice that the special license plate applicant’s application has been denied by the department or the legislature, the director shall provide a refund to the applicant within thirty days.

(7) After the department receives written notice that the special license plate applicant’s application has been withdrawn by the special license plate applicant, the director shall provide a refund to the applicant within thirty days. [2011 c 171 § 68. Prior: 2010 1st sp.s. c 7 § 96; 2010 c 161 § 607; 2004 c 222 § 4; 2003 c 196 § 302. Formerly RCW 46.16.755.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Part headings not law—2003 c 196: See note following RCW 46.18.005.

46.18.200 Department-approved plate types. (Effective until January 1, 2012.) (1) Special license plate series reviewed and approved by the department:

(a) May be issued in lieu of standard issue or personalized license plates for vehicles required to display one and two license plates unless otherwise specified;

(b) Must be issued under terms and conditions established by the department;

(c) Must not be issued for vehicles registered under chapter 46.87 RCW; and

(d) Must display a symbol or artwork approved by the department.

(2) The department approves and shall issue the following special license plates:

LICENSE PLATE	DESCRIPTION, SYMBOL, OR ARTWORK
Armed forces collection	Recognizes the contribution of veterans, active duty military personnel, reservists, and members of the national guard, and includes six separate designs, each containing a symbol representing a different branch of the armed forces to include army, navy, air force, marine corps, coast guard, and national guard.
Endangered wildlife	Displays a symbol or artwork, approved by the special license plate review board and the legislature.
Gonzaga University alumni association	Recognizes the Gonzaga University alumni association.
Helping kids speak	Recognizes an organization that supports programs that provide no-cost speech pathology programs to children.
Keep kids safe	Recognizes efforts to prevent child abuse and neglect.

		LICENSE PLATE	DESCRIPTION, SYMBOL, OR ARTWORK
Law enforcement memorial	Honors law enforcement officers in Washington killed in the line of duty.		
Professional firefighters and paramedics	Recognizes professional firefighters and paramedics who are members of the Washington state council of firefighters.	Armed forces collection	Recognizes the contribution of veterans, active duty military personnel, reservists, and members of the national guard, and includes six separate designs, each containing a symbol representing a different branch of the armed forces to include army, navy, air force, marine corps, coast guard, and national guard.
Share the road	Recognizes an organization that promotes bicycle safety and awareness education.		
Ski & ride Washington	Recognizes the Washington snow-sports industry.		
Washington lighthouses	Recognizes an organization that supports selected Washington state lighthouses and provides environmental education programs.	Endangered wildlife	Displays a symbol or artwork, approved by the special license plate review board and the legislature.
Washington state parks	Recognizes Washington state parks as premier destinations of uncommon quality that preserve significant natural, cultural, historical, and recreational resources.	Gonzaga University alumni association	Recognizes the Gonzaga University alumni association.
Washington's national park fund	Builds awareness of Washington's national parks and supports priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks.	Helping kids speak	Recognizes an organization that supports programs that provide no-cost speech pathology programs to children.
Washington's wildlife collection	Recognizes Washington's wildlife.	Keep kids safe	Recognizes efforts to prevent child abuse and neglect.
We love our pets	Recognizes an organization that assists local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets to reduce pet overpopulation.	Law enforcement memorial	Honors law enforcement officers in Washington killed in the line of duty.
Wild on Washington	Symbolizes wildlife viewing in Washington state.	Music matters	Displays the "Music Matters" logo.
		Professional firefighters and paramedics	Recognizes professional firefighters and paramedics who are members of the Washington state council of firefighters.
		Share the road	Recognizes an organization that promotes bicycle safety and awareness education.
		Ski & ride Washington	Recognizes the Washington snow-sports industry.
		Volunteer firefighters	Recognizes volunteer firefighters.
		Washington lighthouses	Recognizes an organization that supports selected Washington state lighthouses and provides environmental education programs.
		Washington state parks	Recognizes Washington state parks as premier destinations of uncommon quality that preserve significant natural, cultural, historical, and recreational resources.
		Washington's national park fund	Builds awareness of Washington's national parks and supports priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks.
		Washington's wildlife collection	Recognizes Washington's wildlife.
		We love our pets	Recognizes an organization that assists local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets to reduce pet overpopulation.
		Wild on Washington	Symbolizes wildlife viewing in Washington state.

(3) Applicants for initial and renewal professional firefighters and paramedics special license plates must show proof eligibility by providing a certificate of current membership from the Washington state council of firefighters. [2011 c 171 § 69; 2010 c 161 § 611.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.18.200 Department-approved plate types. (Effective January 1, 2012.) (1) Special license plate series reviewed and approved by the department:

(a) May be issued in lieu of standard issue or personalized license plates for vehicles required to display one and two license plates unless otherwise specified;

(b) Must be issued under terms and conditions established by the department;

(c) Must not be issued for vehicles registered under chapter 46.87 RCW; and

(d) Must display a symbol or artwork approved by the department.

(2) The department approves and shall issue the following special license plates:

(3) Applicants for initial and renewal professional firefighters and paramedics special license plates must show

proof eligibility by providing a certificate of current membership from the Washington state council of firefighters.

(4) Applicants for initial volunteer firefighters special license plates must (a) have been a volunteer firefighter for at least ten years or be a volunteer firefighter for one or more years and (b) have documentation of service from the district of the appropriate fire service. If the volunteer firefighter leaves firefighting service before ten years of service have been completed, the volunteer firefighter shall surrender the license plates to the department on the registration renewal date. If the volunteer firefighter stays in service for at least ten years and then leaves, the license plate may be retained by the former volunteer firefighter and as long as the license plate is retained for use the person will continue to pay the future registration renewals. A qualifying volunteer firefighter may have no more than one set of license plates per vehicle, and a maximum of two sets per applicant, for their personal vehicles. If the volunteer firefighter is convicted of a violation of RCW 46.61.502 or a felony, the license plates must be surrendered upon conviction. [2011 c 229 § 1; 2011 c 225 § 1; 2011 c 171 § 69; 2010 c 161 § 611.]

Reviser's note: This section was amended by 2011 c 171 § 69, 2011 c 225 § 1, and by 2011 c 229 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 229: "This act takes effect January 1, 2012." [2011 c 229 § 6.]

Effective date—2011 c 225: "This act takes effect January 1, 2012." [2011 c 225 § 5.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.18.215 Baseball stadium license plates. The department shall create, design, and issue a special baseball stadium license plate that may be used in lieu of standard issue or personalized license plates for motor vehicles required to display one or two license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. The special license plates commemorate the construction of a baseball stadium, as defined in RCW 82.14.0485. The department shall also issue to each recipient of a special baseball stadium license plate a certificate of participation in the construction of the baseball stadium. [2011 c 332 § 3; 2010 c 161 § 614; 1997 c 291 § 5; 1995 3rd sp.s. c 1 § 102; 1994 c 194 § 2; 1990 c 250 § 1. Formerly RCW 46.16.301.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Finding—1997 c 291: "The legislature finds that the proliferation of special license plate series has decreased the ready identification of vehicles by law enforcement, and increased the amount of computer programming conducted by the department of licensing, thereby increasing costs. Furthermore, rarely has the actual demand for special license plates met the requesters' projections. Most importantly, special plates detract from the primary purpose of license plates, that of vehicle identification." [1997 c 291 § 1.]

State contribution for baseball stadium limited: RCW 82.14.0486.

Additional notes found at www.leg.wa.gov

46.18.220 Collector vehicle license plates. (1) A registered owner may apply to the department, county auditor or other agent, or subagent appointed by the director for a collector vehicle license plate for a motor vehicle that is at least thirty years old. The motor vehicle must be operated primarily as a collector vehicle and be in good running order. The applicant for the collector vehicle license plate shall:

(a) Purchase a registration for the motor vehicle as required under chapters 46.16A and 46.17 RCW; and

(b) Pay the special license plate fee established under RCW 46.17.220(1)(d), in addition to any other fees or taxes required by law.

(2) A person applying for a collector vehicle license plate may:

(a) Receive a collector vehicle license plate assigned by the department; or

(b) Provide an actual Washington state issued license plate designated for general use in the year of the vehicle's manufacture.

(3) Collector vehicle license plates:

(a) Are valid for the life of the motor vehicle;

(b) Are not required to be renewed; and

(c) Must be displayed on the rear of the motor vehicle.

(4) A collector vehicle registered under this section may only be used for participation in club activities, exhibitions, tours, parades, and occasional pleasure driving.

(5) Collector vehicle license plates under subsection (2)(b) of this section may be transferred from one motor vehicle to another motor vehicle described in subsection (1) of this section upon application to the department, county auditor or other agent, or subagent appointed by the director.

(6) Any person who knowingly provides a false or facsimile license plate under subsection (2)(b) of this section is subject to a traffic infraction and fine in an amount equal to the monetary penalty for a violation of RCW 46.16A.200(7)(b). Additionally, the person must pay for the cost of a collector vehicle license plate as listed in RCW 46.17.220(1)(d), unless already paid. [2011 c 243 § 1; 2011 c 171 § 70; 2010 c 161 § 617.]

Reviser's note: This section was amended by 2011 c 171 § 70 and by 2011 c 243 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 243 § 1: "Section 1 of this act takes effect August 1, 2011." [2011 c 243 § 3.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.18.2201 Collector vehicle license plates—Vehicle information and identification. (*Effective January 1, 2012.*) The department must provide a method by which law enforcement officers may readily access vehicle information for collector vehicles by using the collector vehicle license plate number. In the event duplicate license plate numbers have been issued to more than one collector vehicle, the department must provide a method for law enforcement officers to identify the correct vehicle. [2011 c 243 § 2.]

Effective date—2011 c 243 § 2: "Section 2 of this act takes effect January 1, 2012." [2011 c 243 § 4.]

46.18.225 Collegiate license plates. A state university, regional university, or state college as defined in RCW 28B.10.016 may apply to the department, in a form approved by the department and request the department to issue a series of collegiate license plates, for display on motor vehicles required to display one or two license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department, depicting the name and mascot or symbol of the college or university, as submitted and approved for use by the requesting institution. [2011 c 332 § 4; 2010 c 161 § 615; 1994 c 194 § 3. Formerly RCW 46.16.324.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.18.230 Congressional medal of honor license plates. (1) A registered owner who has been awarded the Congressional Medal of Honor may apply to the department for special license plates for use on a motor vehicle required to display one or two license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. The Congressional Medal of Honor recipient must:

(a) Provide proof from the Washington state department of veterans affairs showing receipt of the medal; and

(b) Be recorded as the registered owner of the motor vehicle on which the Congressional Medal of Honor license plate or plates will be displayed.

(2) Congressional Medal of Honor license plates must be issued:

(a) Only for a personal motor vehicle owned by persons who have received the Congressional Medal of Honor; and

(b) Without payment of vehicle license fees, license plate fees, and motor vehicle excise taxes.

(3) Congressional Medal of Honor license plates must be replaced, free of charge, if the license plates become lost, stolen, damaged, defaced, or destroyed.

(4) A Congressional Medal of Honor license plate or plates may be transferred, free of charge, from one motor vehicle to another motor vehicle owned by the Congressional Medal of Honor recipient upon application to the department, county auditor or other agent, or subagent appointed by the director. [2011 c 332 § 5; 2010 c 161 § 618.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.18.235 Disabled American veteran or former prisoner of war license plates. (1) A registered owner who is a veteran, as defined in RCW 41.04.007, may apply to the department for disabled American veteran or former prisoner of war license plates, for use on one personal use motor vehicle required to display one or two license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. The veteran must be recorded as the registered owner of the motor vehicle on which the disabled American veteran or former prisoner of war license plate or plates will be displayed and:

(a) Provide certification from the veterans administration or the military service from which the veteran was discharged that the veteran has a service-connected disability rating;

(b) Have lost the use of both hands or one foot;

(c) Have been captured and incarcerated by an enemy of the United States during a period of war with the United States and have received a prisoner of war medal;

(d) Have become blind in both eyes as the result of military service; or

(e) Be rated by the veterans administration or the military service from which the veteran was discharged and be receiving service-connected compensation at the one hundred percent rate that is expected to exist for more than one year.

(2) The special license plates under this section must:

(a) Display distinguishing marks, letters, or numerals indicating that the registered owner is a disabled American veteran or former prisoner of war; and

(b) Be issued for one personal use vehicle without the payment of any vehicle license fees, license plate fees, or excise taxes.

(3) A registered owner who is a veteran, as defined in RCW 41.04.007, may, in lieu of applying for the special license plates under this section, apply for regular issue or any qualifying special license plate and receive the full benefit of the vehicle license fee and excise tax exemption provided in subsection (2)(b) of this section.

(4) The department may periodically verify the one hundred percent rate as described in subsection (1)(e) of this section.

(5) A veteran who has been issued disabled American veteran or former prisoner of war license plates under this section before July 1, 1983, continues to be eligible for the vehicle license fee and excise tax exemption described in subsection (2)(b) of this section.

(6) A disabled American veteran and former prisoner of war license plate or plates may be transferred from one motor vehicle to another motor vehicle owned by the veteran upon application to the department, county auditor or other agent, or subagent appointed by the director.

(7) For the purposes of this section:

(a) "Blind" means the definition of "blind" used by the state of Washington in determining eligibility for financial assistance to the blind under Title 74 RCW; and

(b) "Special license plates" does not include any plate from the armed forces license plate collection established in *RCW 46.18.200(3).

(8) Any unauthorized use of a special license plate under this section is a gross misdemeanor. [2011 c 332 § 6; 2010 c 161 § 619.]

***Reviser's note:** RCW 46.18.200 was amended by 2011 c 229 § 1, 2011 c 225 § 1, and 2011 c 171 § 69, each changing subsection (3) to subsection (2).

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.18.255 Horseless carriage license plates. (1) A registered owner may apply to the department, county auditor or other agent, or subagent appointed by the director for a horseless carriage license plate for a motor vehicle that is at least

forty years old. The motor vehicle must be operated primarily as a collector vehicle and be in good running order. The applicant for the horseless carriage license plate shall:

(a) Purchase a registration for the motor vehicle as required under chapters 46.16A and 46.17 RCW; and

(b) Pay the special license plate fee established under RCW 46.17.220(1)(i), in addition to any other fees or taxes required by law.

(2) Horseless carriage license plates:

(a) Are valid for the life of the motor vehicle;

(b) Are not required to be renewed;

(c) Are not transferrable to any other motor vehicle; and

(d) Must be displayed on the rear of the motor vehicle.

[2011 c 171 § 71; 2010 c 161 § 623.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.18.270 Pearl Harbor survivor license plates. (1) A registered owner who has survived the attack on Pearl Harbor on December 7, 1941, may apply to the department for special license plates for use on only one motor vehicle required to display one or two license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department, and owned by the qualified applicant. The applicant must:

(a) Be a resident of this state;

(b) Have been a member of the United States armed forces on December 7, 1941;

(c) Have been on station on December 7, 1941, between the hours of 7:55 a.m. and 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three miles;

(d) Have received an honorable discharge from the United States armed forces;

(e) Provide certification by a Washington state chapter of the Pearl Harbor survivors association showing that qualifications in (c) of this subsection have been met;

(f) Be recorded as the registered owner of the motor vehicle on which the Pearl Harbor survivor license plate or plates will be displayed; and

(g) Pay all fees and taxes required by law for registering the motor vehicle.

(2) Pearl Harbor survivor license plates must be issued without the payment of any license plate fee.

(3) Pearl Harbor survivor license plates must be replaced, free of charge, if the license plates have become lost, stolen, damaged, defaced, or destroyed.

(4) Pearl Harbor survivor license plates may be issued to the surviving spouse or domestic partner of a Pearl Harbor survivor who met the requirements in subsection (1) of this section. The surviving spouse or domestic partner must be a resident of this state. If the surviving spouse remarries or the surviving domestic partner marries or enters into a new domestic partnership, he or she must return the special license plates to the department within fifteen days and apply for regular license plates or another type of special license plate.

(5) A Pearl Harbor survivor license plate or plates may be transferred from one motor vehicle to another motor vehicle owned by the Pearl Harbor survivor or the surviving spouse or domestic partner as described in subsection (4) of this section upon application to the department, county auditor or other agent, or subagent appointed by the director. [2011 c 332 § 7; 2010 c 161 § 625.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.18.280 Purple heart license plates. (1) A registered owner who has been awarded a Purple Heart medal by any branch of the United States armed forces, including the merchant marines and the women's air forces service pilots may apply to the department for special license plates for use on only one motor vehicle required to display one or two license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department, and owned by the qualified applicant. The applicant must:

(a) Be a resident of this state;

(b) Have been wounded during one of this nation's wars or conflicts identified in RCW 41.04.005;

(c) Have received an honorable discharge from the United States armed forces;

(d) Provide a copy of the armed forces document showing the recipient was awarded the Purple Heart medal;

(e) Be recorded as the registered owner of the motor vehicle on which the Purple Heart survivor license plate or plates will be displayed; and

(f) Pay all fees and taxes required by law for registering the motor vehicle.

(2) Purple Heart license plates must be issued without the payment of any special license plate fee.

(3) Purple Heart license plates may be issued to the surviving spouse or domestic partner of a Purple Heart recipient who met the requirements in subsection (1) of this section. The surviving spouse or domestic partner must be a resident of this state. If the surviving spouse remarries or the surviving domestic partner marries or enters into a new domestic partnership, he or she must return the special license plates to the department within fifteen days and apply for regular license plates or another type of special license plate.

(4) A Purple Heart license plate or plates may be transferred from one motor vehicle to another motor vehicle owned by the Purple Heart recipient or the surviving spouse or domestic partner as described in subsection (3) of this section upon application to the department, county auditor or other agent, or subagent appointed by the director. [2011 c 332 § 8; 2010 c 161 § 628.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.18.285 Ride share license plates. (1) A registered owner who uses a passenger motor vehicle for commuter ride sharing or ride sharing for persons with special transportation needs, as defined in RCW 46.74.010, shall apply to the department, county auditor or other agent, or subagent appointed by the director for special ride share license plates.

The registered owner must qualify for the tax exemptions provided in RCW 82.08.0287, 82.12.0282, or 82.44.015, and pay the special ride share license plate fee required under *RCW 46.17.220(1)(n) when the special ride share license plates are initially issued.

(2) The special ride share license plates:

(a) Must be of a distinguishing separate numerical series or design as defined by the department;

(b) Must be returned to the department when no longer in use or when the registered owner no longer qualifies for the tax exemptions provided in subsection (1) of this section; and

(c) Are not required to be renewed annually for motor vehicles described in RCW 46.16A.170.

(3) Special ride share license plates may be transferred from one motor vehicle to another motor vehicle as described in subsection (1) of this section upon application to the department, county auditor or other agent, or subagent appointed by the director.

(4) Any person who knowingly makes a false statement of a material fact in the application for a special license plate under subsection (1) of this section is guilty of a gross misdemeanor. [2011 c 171 § 72; 2010 c 161 § 629.]

***Reviser's note:** RCW 46.17.220 was amended by 2011 c 229 § 3, changing subsection (1)(n) to subsection (1)(o), effective January 1, 2012.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.18.290 Square dancer license plates. A registered owner may apply to the department, county auditor or other agent, or subagent appointed by the director for a square dancer license plate. The registered owner shall pay the special license plate fee required under *RCW 46.17.220(1)(q), in addition to any other fee or tax required by law. The square dancer license plate may be issued in lieu of standard issue or personalized license plates for motor vehicles required to display one or two license plates, but may not be issued for vehicles registered under chapter 46.87 RCW. [2011 c 332 § 9; 2010 c 161 § 630.]

***Reviser's note:** RCW 46.17.220 was amended by 2011 c 229 § 3, changing subsection (1)(q) to subsection (1)(r), effective January 1, 2012.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.18.295 Veterans and military personnel emblems.

(1) Veterans discharged under honorable conditions (veterans) and individuals serving on active duty in the United States armed forces (active duty military personnel) may purchase a veterans remembrance emblem or campaign medal emblem. The emblem is to be displayed on license plates in the manner described by the department, existing vehicular registration procedures, and current laws.

(2) Veterans and active duty military personnel who served during periods of war or armed conflict may purchase a remembrance emblem depicting campaign ribbons which they were awarded.

(3) The following campaign ribbon remembrance emblems are available:

(a) World War I victory medal;

(b) World War II Asiatic-Pacific campaign medal;

(c) World War II European-African Middle East campaign medal;

(d) World War II American campaign medal;

(e) Korean service medal;

(f) Vietnam service medal;

(g) Armed forces expeditionary medal awarded after 1958; and

(h) Southwest Asia medal.

The director may issue additional campaign ribbon emblems by rule as authorized decorations by the United States department of defense.

(4) Veterans or active duty military personnel requesting a veteran remembrance emblem or campaign medal emblem or emblems must:

(a) Pay a prescribed fee set by the department; and

(b) Show proof of eligibility through:

(i) Providing a DD-214 or discharge papers if a veteran;

(ii) Providing a copy of orders awarding a campaign ribbon if an individual serving on military active duty; or

(iii) Attesting in a notarized affidavit of their eligibility as required under this section.

(5) Veterans or active duty military personnel who purchase a veteran remembrance emblem or a campaign medal emblem must be the legal or registered owner of the vehicle on which the emblem is to be displayed. [2011 c 171 § 73; 1997 c 234 § 1; 1991 c 339 § 11; 1990 c 250 § 6. Formerly RCW 46.16.319.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

Chapter 46.19 RCW

SPECIAL PARKING PRIVILEGES FOR PERSONS WITH DISABILITIES

Sections

46.19.010	Criteria for natural persons—Application—Identification cards, placards, and license plates.
46.19.050	Restrictions—Prohibitions—Violations—Penalties.
46.19.060	Special license plates for persons with disabilities, special license plates with a special year tab for persons with disabilities—Fees—Renewal—Transfer.

46.19.010 Criteria for natural persons—Application—Identification cards, placards, and license plates.

(1) A natural person who has a disability that meets one of the following criteria may apply for special parking privileges:

(a) Cannot walk two hundred feet without stopping to rest;

(b) Is severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;

(c) Has such a severe disability that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) Uses portable oxygen;

(e) Is restricted by lung disease to an extent that forced expiratory respiratory volume, when measured by spirometry, is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(f) Impairment by cardiovascular disease or cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American heart association;

(g) Has a disability resulting from an acute sensitivity to automobile emissions that limits or impairs the ability to walk. The personal physician, advanced registered nurse practitioner, or physician assistant of the applicant shall document that the disability is comparable in severity to the others listed in this subsection;

(h) Has limited mobility and has no vision or whose vision with corrective lenses is so limited that the person requires alternative methods or skills to do efficiently those things that are ordinarily done with sight by persons with normal vision;

(i) Has an eye condition of a progressive nature that may lead to blindness; or

(j) Is restricted by a form of porphyria to the extent that the applicant would significantly benefit from a decrease in exposure to light.

(2) The disability must be determined by either:

(a) A licensed physician;

(b) An advanced registered nurse practitioner licensed under chapter 18.79 RCW; or

(c) A physician assistant licensed under chapter 18.71A or 18.57A RCW.

(3) The application for special parking privileges for persons with disabilities must contain:

(a) The following statement immediately below the physician's, advanced registered nurse practitioner's, or physician assistant's signature: "A parking permit for a person with disabilities may be issued only for a medical necessity that severely affects mobility or involves acute sensitivity to light (RCW 46.19.010). Knowingly providing false information on this application is a gross misdemeanor. The penalty is up to three hundred sixty-four days in jail and a fine of up to \$5,000 or both"; and

(b) Other information as required by the department.

(4) A natural person who has a disability described in subsection (1) of this section and is expected to improve within six months may be issued a temporary placard for a period not to exceed six months. If the disability exists after six months, a new temporary placard must be issued upon receipt of a new application with certification from the person's physician. Special license plates for persons with disabilities may not be issued to a person with a temporary disability.

(5) A natural person who qualifies for special parking privileges under this section must receive an identification card showing the name and date of birth of the person to whom the parking privilege has been issued and the serial number of the placard.

(6) A natural person who qualifies for permanent special parking privileges under this section may receive one of the following:

(a) Up to two parking placards;

(b) One set of special license plates for persons with disabilities if the person with the disability is the registered owner of the vehicle on which the license plates will be displayed;

(c) One parking placard and one set of special license plates for persons with disabilities if the person with the disability is the registered owner of the vehicle on which the license plates will be displayed; or

(d) One special parking year tab for persons with disabilities and one parking placard.

(7) Parking placards and identification cards described in this section must be issued free of charge.

(8) The parking placard and identification card must be immediately returned to the department upon the placard holder's death. [2011 c 96 § 32; 2010 c 161 § 701.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.19.050 Restrictions—Prohibitions—Violations—Penalties. (1) **False information.** Knowingly providing false information in conjunction with the application for special parking privileges for persons with disabilities is a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) **Unauthorized use.** Any unauthorized use of the special placard, special license, or identification card issued under this chapter is a parking infraction with a monetary penalty of two hundred fifty dollars. In addition to any penalty or fine imposed under this subsection, two hundred dollars must be assessed.

(3) **Inaccessible access.** It is a parking infraction, with a monetary penalty of two hundred fifty dollars, for a person to park in, block, or otherwise make inaccessible the access aisle located next to a space reserved for persons with physical disabilities. In addition to any penalty or fine imposed under this subsection, two hundred dollars must be assessed. The clerk of the court shall report all violations related to this subsection to the department.

(4) **Parking without placard/plate.** It is a parking infraction, with a monetary penalty of two hundred fifty dollars, for any person to park a vehicle in a parking place provided on private property without charge or on public property reserved for persons with physical disabilities without a placard or special license plate issued under this chapter. In addition to any penalty or fine imposed under this subsection, two hundred dollars must be assessed. If a person is charged with a violation, the person will not be determined to have committed an infraction if the person produces in court or before the court appearance the placard or special license plate issued under this chapter as required under this chapter. A local jurisdiction providing nonmetered, on-street parking places reserved for persons with physical disabilities may impose by ordinance time restrictions of no less than four hours on the use of these parking places.

(5) **Time restrictions.** A local jurisdiction may impose by ordinance time restrictions of no less than four hours on the use of nonreserved, on-street parking spaces by vehicles displaying the special parking placards or special license plates issued under this chapter. All time restrictions must be clearly posted.

(6) **Allocation and use of funds - reimbursement.** (a) The assessment imposed under subsections (2), (3), and (4) of this section must be allocated as follows:

(i) One hundred dollars must be deposited in the accessible communities account created in RCW 50.40.071; and

(ii) One hundred dollars must be deposited in the multi-modal transportation account under RCW 47.66.070 for the sole purpose of supplementing a grant program for special needs transportation provided by transit agencies and non-profit providers of transportation that is administered by the department of transportation.

(b) Any reduction in any penalty or fine and assessment imposed under subsections (2), (3), and (4) of this section must be applied proportionally between the penalty or fine and the assessment. When a reduced penalty is imposed under subsection (2), (3), or (4) of this section, the amount deposited in the accounts identified in (a) of this subsection must be reduced equally and proportionally.

(c) The penalty or fine amounts must be used by that local jurisdiction exclusively for law enforcement. The court may also impose an additional penalty sufficient to reimburse the local jurisdiction for any costs that it may have incurred in the removal and storage of the improperly parked vehicle.

(7) **Illegal obtainment.** Except as provided in subsection (1) of this section, it is a traffic infraction with a monetary penalty of two hundred fifty dollars for any person willfully to obtain a special license plate, placard, or identification card issued under this chapter in a manner other than that established under this chapter.

(8) **Volunteer appointment.** A law enforcement agency authorized to enforce parking laws may appoint volunteers, with a limited commission, to issue notices of infractions for violations of RCW 46.19.010 and 46.19.030 or 46.61.581. Volunteers must be at least twenty-one years of age. The law enforcement agency appointing volunteers may establish any other qualifications that the agency deems desirable.

(a) An agency appointing volunteers under this section must provide training to the volunteers before authorizing them to issue notices of infractions.

(b) A notice of infraction issued by a volunteer appointed under this subsection has the same force and effect as a notice of infraction issued by a police officer for the same offense.

(c) A police officer or a volunteer may request a person to show the person's identification card or special parking placard when investigating the possibility of a violation of this section. If the request is refused, the person in charge of the vehicle may be issued a notice of infraction for a violation of this section.

(9) **Community restitution.** For second or subsequent violations of this section, in addition to a monetary penalty, the violator must complete a minimum of forty hours of:

(a) Community restitution for a nonprofit organization that serves persons with disabilities or disabling diseases; or

(b) Any other community restitution that may sensitize the violator to the needs and obstacles faced by persons with disabilities.

(10) **Fine suspension.** The court may not suspend more than one-half of any fine imposed under subsection (2), (3), (4), or (7) of this section. [2011 c 171 § 74; 2010 c 161 § 706.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

[2011 RCW Supp—page 1012]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.19.060 Special license plates for persons with disabilities, special license plates with a special year tab for persons with disabilities—Fees—Renewal—Transfer. (1) An additional fee may not be charged for special license plates for persons with disabilities except for any other fees and taxes required to be paid upon registration of a motor vehicle.

(2) A registered owner who qualifies for special parking privileges as described in RCW 46.19.010 may apply to the department for special license plates for persons with disabilities or special license plates with a special year tab for persons with disabilities. Special license plates with a special year tab for persons with disabilities are available on the following special license plate designs:

PLATE TYPE	ISSUED UNDER
Armed forces collection	RCW 46.18.210
Baseball stadium	RCW 46.18.215
Collegiate	RCW 46.18.225
Disabled American veteran	RCW 46.18.235
Endangered wildlife	RCW 46.18.200
Former prisoner of war	RCW 46.18.235
Helping kids speak	RCW 46.18.200
Keep kids safe	RCW 46.18.200
Law enforcement memorial	RCW 46.18.200
Pearl Harbor survivor	RCW 46.18.270
Personalized	RCW 46.18.275
Professional firefighters and paramedics	RCW 46.18.200
Purple Heart	RCW 46.18.280
Share the road	RCW 46.18.200
Ski & ride Washington	RCW 46.18.200
Square dancer	RCW 46.18.290
Washington lighthouses	RCW 46.18.200
Washington's national park fund	RCW 46.18.200
Washington state parks	RCW 46.18.200
Washington's wildlife collection	RCW 46.18.200
We love our pets	RCW 46.18.200
Wild on Washington	RCW 46.18.200

(3) A registered owner who chooses to purchase special license plates as described in subsection (2) of this section shall pay the applicable special license plate fee, in addition to any other fees or taxes required for registering a motor vehicle.

(4) Special license plates for persons with disabilities or special license plates with a special year tab for persons with disabilities must be renewed in the same manner and at the time required for the renewal of standard motor vehicle license plates under chapter 46.16A RCW.

(5) Special license plates for persons with disabilities or special license plates with a special year tab for persons with disabilities may be transferred from one motor vehicle to another motor vehicle owned by the person with the parking privilege upon application to the department, county auditor or other agent, or subagent appointed by the director.

(6) Special license plates for persons with disabilities or special license plates with a special year tab for persons with disabilities must be removed from the motor vehicle when the person with disabilities transfers or assigns his or her interest in the motor vehicle. [2011 c 171 § 75; 2010 c 161 § 705.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 46.20 RCW

DRIVERS' LICENSES—IDENTICARDS

Sections

46.20.049	Commercial driver's license—Additional fee, disposition.
46.20.075	Intermediate license. (<i>Effective January 1, 2012.</i>)
46.20.111	Registration with selective service system for males under twenty-six upon application—Opportunity to consent or decline. (<i>Effective January 1, 2012.</i>)
46.20.120	Examinations—Waiver—Fees—Renewals—Administration.
46.20.157	Data to consolidated technology services agency—Confidentiality.
46.20.342	Driving while license invalidated—Penalties—Extension of invalidation. (<i>Effective July 1, 2012.</i>)
46.20.385	Ignition interlock driver's license—Application—Eligibility—Cancellation—Costs—Rules.
46.20.510	Instruction permit—Fee.
46.20.515	Examination—Emphasis—Administration—Waiver.
46.20.720	Drivers convicted of alcohol offenses.

46.20.049 Commercial driver's license—Additional fee, disposition. There shall be an additional fee for issuing any class of commercial driver's license in addition to the prescribed fee required for the issuance of the original driver's license. The additional fee for each class shall be sixty-one dollars for the original commercial driver's license or subsequent renewals. If the commercial driver's license is renewed or extended for a period other than five years, the fee for each class shall be twelve dollars and twenty cents for each year that the commercial driver's license is renewed or extended. The fee shall be deposited in the highway safety fund. [2011 c 227 § 6; 2005 c 314 § 309; 1999 c 308 § 4; 1989 c 178 § 21; 1985 ex.s. c 1 § 7; 1969 ex.s. c 68 § 3; 1967 ex.s. c 20 § 4. Formerly RCW 46.20.470.]

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.68.035.

Additional notes found at www.leg.wa.gov

46.20.075 Intermediate license. (*Effective January 1, 2012.*) (1) An intermediate license authorizes the holder to drive a motor vehicle under the conditions specified in this section. An applicant for an intermediate license must be at least sixteen years of age and:

(a) Have possessed a valid instruction permit for a period of not less than six months;

(b) Have passed a driver licensing examination administered by the department;

(c) Have passed a course of driver's education in accordance with the standards established in RCW 46.20.100;

(d) Present certification by his or her parent, guardian, or employer to the department stating (i) that the applicant has had at least fifty hours of driving experience, ten of which were at night, during which the driver was supervised by a person at least twenty-one years of age who has had a valid driver's license for at least three years, and (ii) that the applicant has not been issued a notice of traffic infraction or cited for a traffic violation that is pending at the time of the application for the intermediate license;

(e) Not have been convicted of or found to have committed a traffic violation within the last six months before the application for the intermediate license; and

(f) Not have been adjudicated for an offense involving the use of alcohol or drugs during the period the applicant held an instruction permit.

(2) For the first six months after the issuance of an intermediate license or until the holder reaches eighteen years of age, whichever occurs first, the holder of the license may not operate a motor vehicle that is carrying any passengers under the age of twenty who are not members of the holder's immediate family as defined in RCW 42.17A.005. For the remaining period of the intermediate license, the holder may not operate a motor vehicle that is carrying more than three passengers who are under the age of twenty who are not members of the holder's immediate family.

(3) The holder of an intermediate license may not operate a motor vehicle between the hours of 1 a.m. and 5 a.m. except when the holder is accompanied by a parent, guardian, or a licensed driver who is at least twenty-five years of age.

(4) The holder of an intermediate license may not operate a moving motor vehicle while using a wireless communications device unless the holder is using the device to report illegal activity, summon medical or other emergency help, or prevent injury to a person or property.

(5) It is a traffic infraction for the holder of an intermediate license to operate a motor vehicle in violation of the restrictions imposed under this section.

(6) Except for a violation of subsection (4) of this section, enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of this title or an equivalent local ordinance or some other offense.

(7) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if necessary for agricultural purposes.

(8) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if, for the twelve-month period following the issuance of the intermediate license, he or she:

(a) Has not been involved in an accident involving only one motor vehicle;

(b) Has not been involved in an accident where he or she was cited in connection with the accident or was found to have caused the accident;

(c) Has not been involved in an accident where no one was cited or was found to have caused the accident; and

(d) Has not been convicted of or found to have committed a traffic offense described in chapter 46.61 RCW or violated restrictions placed on an intermediate licensee under this section. [2011 c 60 § 44; 2010 c 223 § 2; 2009 c 125 § 1; 2000 c 115 § 2.]

Effective date—2011 c 60: See RCW 42.17A.919.

Finding—2000 c 115: "The legislature has recognized the need to develop a graduated licensing system in light of the disproportionately high incidence of motor vehicle crashes involving youthful motorists. This system will improve highway safety by progressively developing and improving the skills of younger drivers in the safest possible environment, thereby reducing the number of vehicle crashes." [2000 c 115 § 1.]

Additional notes found at www.leg.wa.gov

46.20.111 Registration with selective service system for males under twenty-six upon application—Opportunity to consent or decline. (Effective January 1, 2012.) (1) Subject to the availability of funds appropriated for this purpose, any person who is a male citizen or noncitizen of the United States, who applies for an original, the renewal of, or a replacement instruction permit, intermediate license, driver's license, or identicard under this chapter, and who is under the age of twenty-six, must be given the opportunity to register as required by the military selective service act (62 Stat. 604; 50 App. U.S.C. Sec. 451 et seq.), as amended.

(2) The submission of an application by an applicant under subsection (1) of this section indicates that:

(a) The applicant has already registered with the selective service system;

(b) The applicant authorizes the department to forward to the selective service system the necessary personal information required for registration into the system; or

(c) The applicant declines registration for purposes of the military selective service act (62 Stat. 604; 50 App. U.S.C. Sec. 451 et seq.), as amended, in conjunction with the submission of an application under subsection (1) of this section.

(3)(a) The department shall forward electronically any necessary personal information of the applicant to the selective service system within ten days of receipt of the application, as authorized under subsection (2)(b) of this section.

(b) When applicable, the department shall notify the applicant at the time of application submission that, by submitting the application, the applicant authorizes the department to register the applicant with the selective service system. If the applicant is under the age of eighteen at the time of application, the department shall notify the applicant that he will be registered with the selective service system as required by federal law. When providing notice under this subsection (3)(b), the department shall provide the applicant with materials containing the following statement:

"By submitting this application, I am consenting to registration with the Selective Service System, if so required by federal law. If under age 18, I understand that I will be registered as required by federal law when I attain age 18."

(4)(a) If an applicant declines to register with the selective service system under subsection (2)(c) of this section, the department may not create a record indicating that the applicant declined to register.

(b) Any department information that indicates that an applicant has declined to register under subsection (2)(c) of

this section is exempt from the disclosure requirements under chapter 42.56 RCW, and the department may not disclose the information to any other government agency.

(5) The department may not deny the issuance of an instruction permit, intermediate license, driver's license, or identicard if the applicant declines to register with the selective service system, provided that the applicant meets all other requirements of this chapter.

(6) The department may provide selective service system registration information to applicants who choose to decline the opportunity to register with the selective service system if the applicant requests registration information.

(7) The department may adopt rules as necessary to implement this section. [2011 c 350 § 1.]

Effective date—2011 c 350: "This act takes effect January 1, 2012." [2011 c 350 § 3.]

46.20.120 Examinations—Waiver—Fees—Renewals—Administration. An applicant for a new or renewed driver's license must successfully pass a driver licensing examination to qualify for a driver's license. The department must ensure that examinations are given at places and times reasonably available to the people of this state. If the department does not administer driver licensing examinations as a routine part of its licensing services within a department region because adequate testing sites are provided by driver training schools or school districts within that region, the department shall, at a minimum, administer driver licensing examinations by appointment to applicants eighteen years of age and older in at least one licensing office within that region.

(1) **Waiver.** The department may waive:

(a) All or any part of the examination of any person applying for the renewal of a driver's license unless the department determines that the applicant is not qualified to hold a driver's license under this title; or

(b) All or any part of the examination involving operating a motor vehicle if the applicant:

(i) Surrenders a valid driver's license issued by the person's previous home state; or

(ii) Provides for verification a valid driver's license issued by a foreign driver licensing jurisdiction with which the department has an informal agreement under RCW 46.20.125; and

(iii) Is otherwise qualified to be licensed.

(2) **Fee.** Each applicant for a new license must pay an examination fee of twenty dollars.

(a) The examination fee is in addition to the fee charged for issuance of the license.

(b) "New license" means a license issued to a driver:

(i) Who has not been previously licensed in this state; or

(ii) Whose last previous Washington license has been expired for more than five years.

(3) An application for driver's license renewal may be submitted by means of:

(a) Personal appearance before the department; or

(b) Mail or electronic commerce, if permitted by rule of the department and if the applicant did not renew his or her license by mail or by electronic commerce when it last expired.

(4) A person whose license expired or will expire while he or she is living outside the state, may:

(a) Apply to the department to extend the validity of his or her license for no more than twelve months. If the person establishes to the department's satisfaction that he or she is unable to return to Washington before the date his or her license expires, the department shall extend the person's license. The department may grant consecutive extensions, but in no event may the cumulative total of extensions exceed twelve months. An extension granted under this section does not change the expiration date of the license for purposes of RCW 46.20.181. The department shall charge a fee of five dollars for each license extension;

(b) Apply to the department to renew his or her license by mail or, if permitted by rule of the department, by electronic commerce even if subsection (3)(b) of this section would not otherwise allow renewal by that means. If the person establishes to the department's satisfaction that he or she is unable to return to Washington within twelve months of the date that his or her license expires, the department shall renew the person's license by mail or, if permitted by rule of the department, by electronic commerce.

(5) If a qualified person submits an application for renewal under subsection (3)(b) or (4)(b) of this section, he or she is not required to pass an examination nor provide an updated photograph. A license renewed by mail or by electronic commerce that does not include a photograph of the licensee must be labeled "not valid for identification purposes."

(6) Driver training schools licensed by the department under chapter 46.82 RCW may administer the portions of the driver licensing examination that test the applicant's knowledge of traffic laws and ability to safely operate a motor vehicle.

(7) School districts that offer a traffic safety education program under chapter 28A.220 RCW may administer the portions of the driver licensing examination that test the applicant's knowledge of traffic laws and ability to safely operate a motor vehicle. [2011 c 370 § 4. Prior: 2005 c 314 § 306; 2005 c 61 § 2; 2004 c 249 § 6; 2002 c 352 § 13; prior: 1999 c 308 § 1; 1999 c 199 § 3; 1999 c 6 § 19; 1990 c 9 § 1; 1988 c 88 § 2; 1985 ex.s. c 1 § 4; 1979 c 61 § 6; 1975 1st ex.s. c 191 § 2; 1967 c 167 § 4; 1965 ex.s. c 121 § 9; 1961 c 12 § 46.20.120; prior: 1959 c 284 § 1; 1953 c 221 § 2; 1937 c 188 § 55, part; RRS § 6312-55, part.]

Intent—2011 c 370: See note following RCW 28A.220.030.

Inclusion of stakeholder groups in communications to facilitate transition of driver licensing examination administration—2011 c 370: See note following RCW 46.82.450.

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.68.035.

Intent—2005 c 61: See note following RCW 46.20.125.

Effective dates—2002 c 352: See note following RCW 46.09.410.

Intent—1999 c 6: See note following RCW 46.04.168.

Additional notes found at www.leg.wa.gov

46.20.157 Data to consolidated technology services agency—Confidentiality. (1) Except as provided in subsection (2) of this section, the department shall annually provide

to the consolidated technology services agency an electronic data file. The data file must:

(a) Contain information on all licensed drivers and identicard holders who are eighteen years of age or older and whose records have not expired for more than two years;

(b) Be provided at no charge; and

(c) Contain the following information on each such person: Full name, date of birth, residence address including county, sex, and most recent date of application, renewal, replacement, or change of driver's license or identicard.

(2) Before complying with subsection (1) of this section, the department shall remove from the file the names of any certified participants in the Washington state address confidentiality program under chapter 40.24 RCW that have been identified to the department by the secretary of state. [2011 1st sp.s. c 43 § 811; 1999 c 6 § 21; 1993 c 408 § 12.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—1999 c 6: See note following RCW 46.04.168.

Additional notes found at www.leg.wa.gov

46.20.342 Driving while license invalidated—Penalties—Extension of invalidation. (Effective July 1, 2012.)

(1) It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this or any other state. Any person who has a valid Washington driver's license is not guilty of a violation of this section.

(a) A person found to be a habitual offender under chapter 46.65 RCW, who violates this section while an order of revocation issued under chapter 46.65 RCW prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree, a gross misdemeanor. Upon the first such conviction, the person shall be punished by imprisonment for not less than ten days. Upon the second conviction, the person shall be punished by imprisonment for not less than ninety days. Upon the third or subsequent conviction, the person shall be punished by imprisonment for not less than one hundred eighty days. If the person is also convicted of the offense defined in RCW 46.61.502 or 46.61.504, when both convictions arise from the same event, the minimum sentence of confinement shall be not less than ninety days. The minimum sentence of confinement required shall not be suspended or deferred. A conviction under this subsection does not prevent a person from petitioning for reinstatement as provided by RCW 46.65.080.

(b) A person who violates this section while an order of suspension or revocation prohibiting such operation is in effect and while the person is not eligible to reinstate his or her driver's license or driving privilege, other than for a suspension for the reasons described in (c) of this subsection, is guilty of driving while license suspended or revoked in the second degree, a gross misdemeanor. For the purposes of this subsection, a person is not considered to be eligible to reinstate his or her driver's license or driving privilege if the person is eligible to obtain an ignition interlock driver's license but did not obtain such a license. This subsection applies when a person's driver's license or driving privilege has been suspended or revoked by reason of:

- (i) A conviction of a felony in the commission of which a motor vehicle was used;
 - (ii) A previous conviction under this section;
 - (iii) A notice received by the department from a court or diversion unit as provided by RCW 46.20.265, relating to a minor who has committed, or who has entered a diversion unit concerning an offense relating to alcohol, legend drugs, controlled substances, or imitation controlled substances;
 - (iv) A conviction of RCW 46.20.410, relating to the violation of restrictions of an occupational driver's license, a temporary restricted driver's license, or an ignition interlock driver's license;
 - (v) A conviction of RCW 46.20.345, relating to the operation of a motor vehicle with a suspended or revoked license;
 - (vi) A conviction of RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;
 - (vii) A conviction of RCW 46.61.024, relating to attempting to elude pursuing police vehicles;
 - (viii) A conviction of RCW 46.61.212(4), relating to reckless endangerment of emergency zone workers;
 - (ix) A conviction of RCW 46.61.500, relating to reckless driving;
 - (x) A conviction of RCW 46.61.502 or 46.61.504, relating to a person under the influence of intoxicating liquor or drugs;
 - (xi) A conviction of RCW 46.61.520, relating to vehicular homicide;
 - (xii) A conviction of RCW 46.61.522, relating to vehicular assault;
 - (xiii) A conviction of RCW 46.61.527(4), relating to reckless endangerment of roadway workers;
 - (xiv) A conviction of RCW 46.61.530, relating to racing of vehicles on highways;
 - (xv) A conviction of RCW 46.61.685, relating to leaving children in an unattended vehicle with motor running;
 - (xvi) A conviction of RCW 46.61.740, relating to theft of motor vehicle fuel;
 - (xvii) A conviction of RCW 46.64.048, relating to attempting, aiding, abetting, coercing, and committing crimes;
 - (xviii) An administrative action taken by the department under chapter 46.20 RCW;
 - (xix) A conviction of a local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state, of an offense substantially similar to a violation included in this subsection; or
 - (xx) A finding that a person has committed a traffic infraction under RCW 46.61.526 and suspension of driving privileges pursuant to RCW 46.61.526 (4)(b) or (7)(a)(ii).
- (c) A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because (i) the person must furnish proof of satisfactory progress in a required alcoholism or drug treatment program, (ii) the person must furnish proof of financial responsibility for the future as provided by chapter 46.29 RCW, (iii) the person has failed to comply with the provisions of chapter 46.29 RCW relating to uninsured accidents, (iv) the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has

failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289, (v) the person has committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license, (vi) the person has been suspended or revoked by reason of one or more of the items listed in (b) of this subsection, but was eligible to reinstate his or her driver's license or driving privilege at the time of the violation, or (vii) the person has received traffic citations or notices of traffic infraction that have resulted in a suspension under RCW 46.20.267 relating to intermediate drivers' licenses, or any combination of (c)(i) through (vii) of this subsection, is guilty of driving while license suspended or revoked in the third degree, a misdemeanor. For the purposes of this subsection, a person is not considered to be eligible to reinstate his or her driver's license or driving privilege if the person is eligible to obtain an ignition interlock driver's license but did not obtain such a license.

(2) Upon receiving a record of conviction of any person or upon receiving an order by any juvenile court or any duly authorized court officer of the conviction of any juvenile under this section, the department shall:

(a) For a conviction of driving while suspended or revoked in the first degree, as provided by subsection (1)(a) of this section, extend the period of administrative revocation imposed under chapter 46.65 RCW for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(b) For a conviction of driving while suspended or revoked in the second degree, as provided by subsection (1)(b) of this section, not issue a new license or restore the driving privilege for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(c) Not extend the period of suspension or revocation if the conviction was under subsection (1)(c) of this section. If the conviction was under subsection (1)(a) or (b) of this section and the court recommends against the extension and the convicted person has obtained a valid driver's license, the period of suspension or revocation shall not be extended. [2011 c 372 § 2. Prior: 2010 c 269 § 7; 2010 c 252 § 4; 2008 c 282 § 4; 2004 c 95 § 5; 2001 c 325 § 3; 2000 c 115 § 8; 1999 c 274 § 3; 1993 c 501 § 6; 1992 c 130 § 1; 1991 c 293 § 6; prior: 1990 c 250 § 47; 1990 c 210 § 5; 1987 c 388 § 1; 1985 c 302 § 3; 1980 c 148 § 3; prior: 1979 ex.s. c 136 § 62; 1979 ex.s. c 74 § 1; 1969 c 27 § 2; prior: 1967 ex.s. c 145 § 52; 1967 c 167 § 7; 1965 ex.s. c 121 § 43.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Application—Effective date—2011 c 372: See notes following RCW 46.61.526.

Effective date—2010 c 269: See note following RCW 46.20.385.

Effective date—2010 c 252: See note following RCW 46.61.212.

Effective date—2008 c 282: See note following RCW 46.20.308.

Finding—2000 c 115: See note following RCW 46.20.075.

Impoundment of vehicle: RCW 46.55.113.

Additional notes found at www.leg.wa.gov

46.20.385 Ignition interlock driver's license—Application—Eligibility—Cancellation—Costs—Rules. (1)(a) Beginning January 1, 2009, any person licensed under this chapter who is convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance, or a violation of RCW 46.61.520(1)(a) or 46.61.522(1)(b), or who has had or will have his or her license suspended, revoked, or denied under RCW 46.20.3101, may submit to the department an application for an ignition interlock driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue an ignition interlock driver's license.

(b) A person may apply for an ignition interlock driver's license anytime, including immediately after receiving the notices under RCW 46.20.308 or after his or her license is suspended, revoked, or denied. A person receiving an ignition interlock driver's license waives his or her right to a hearing or appeal under RCW 46.20.308.

(c) An applicant under this subsection shall provide proof to the satisfaction of the department that a functioning ignition interlock device has been installed on all vehicles operated by the person.

(i) The department shall require the person to maintain the device on all vehicles operated by the person and shall restrict the person to operating only vehicles equipped with the device, for the remainder of the period of suspension, revocation, or denial. The installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours.

(ii) Subject to any periodic renewal requirements established by the department under this section and subject to any applicable compliance requirements under this chapter or other law, an ignition interlock driver's license granted upon a suspension or revocation under RCW 46.61.5055 or 46.20.3101 extends through the remaining portion of any concurrent or consecutive suspension or revocation that may be imposed as the result of administrative action and criminal conviction arising out of the same incident.

(iii) The time period during which the person is licensed under this section shall apply on a day-for-day basis toward satisfying the period of time the ignition interlock device restriction is required under RCW 46.20.720 and 46.61.5055. Beginning with incidents occurring on or after September 1, 2011, when calculating the period of time for the restriction under RCW 46.20.720(3), the department must also give the person a day-for-day credit for the time period, beginning from the date of the incident, during which the person kept an ignition interlock device installed on all vehicles the person operates. For the purposes of this subsection (1)(c)(iii), the term "all vehicles" does not include vehicles that would be subject to the employer exception under RCW 46.20.720(3).

(2) An applicant for an ignition interlock driver's license who qualifies under subsection (1) of this section is eligible to receive a license only if the applicant files satisfactory proof of financial responsibility under chapter 46.29 RCW.

(3) Upon receipt of evidence that a holder of an ignition interlock driver's license granted under this subsection no longer has a functioning ignition interlock device installed on all vehicles operated by the driver, the director shall give written notice by first-class mail to the driver that the ignition interlock driver's license shall be canceled. If at any time before the cancellation goes into effect the driver submits evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new ignition interlock driver's license upon submittal of evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver.

(4) A person aggrieved by the decision of the department on the application for an ignition interlock driver's license may request a hearing as provided by rule of the department.

(5) The director shall cancel an ignition interlock driver's license after receiving notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, no longer meets the eligibility requirements, or has been convicted of or found to have committed a separate offense or any other act or omission that under this chapter would warrant suspension or revocation of a regular driver's license. The department must give notice of the cancellation as provided under RCW 46.20.245. A person whose ignition interlock driver's license has been canceled under this section may reapply for a new ignition interlock driver's license if he or she is otherwise qualified under this section and pays the fee required under RCW 46.20.380.

(6)(a) Unless costs are waived by the ignition interlock company or the person is indigent under RCW 10.101.010, the applicant shall pay the cost of installing, removing, and leasing the ignition interlock device and shall pay an additional fee of twenty dollars per month. Payments shall be made directly to the ignition interlock company. The company shall remit the additional twenty-dollar fee to the department.

(b) The department shall deposit the proceeds of the twenty-dollar fee into the ignition interlock device revolving account. Expenditures from the account may be used only to administer and operate the ignition interlock device revolving account program. The department shall adopt rules to provide monetary assistance according to greatest need and when funds are available.

(7) The department shall adopt rules to implement ignition interlock licensing. The department shall consult with the administrative office of the courts, the state patrol, the Washington association of sheriffs and police chiefs, ignition interlock companies, and any other organization or entity the department deems appropriate. [2011 c 293 § 1; 2010 c 269 § 1; 2008 c 282 § 9.]

Effective date—2011 c 293 §§ 1-9: "Sections 1 through 9 of this act take effect September 1, 2011." [2011 c 293 § 16.]

Effective date—2010 c 269: "This act takes effect January 1, 2011." [2010 c 269 § 12.]

46.20.510 Instruction permit—Fee. (1) **Motorcycle instruction permit.** A person holding a valid driver's license who wishes to learn to ride a motorcycle may apply for a motorcycle instruction permit. The department may issue a motorcycle instruction permit after the applicant has successfully passed all parts of the motorcycle examination other than the driving test. The director shall collect a fee of fifteen dollars for the motorcycle instruction permit or renewal, and deposit the fee in the motorcycle safety education account of the highway safety fund.

(2) **Effect of motorcycle instruction permit.** A person holding a motorcycle instruction permit may drive a motorcycle upon the public highways if the person has immediate possession of the permit and a valid driver's license. An individual with a motorcyclist's instruction permit may not carry passengers and may not operate a motorcycle during the hours of darkness.

(3) **Term of motorcycle instruction permit.** A motorcycle instruction permit is valid for ninety days from the date of issue.

(a) The department may issue one additional ninety-day permit.

(b) The department may issue a third motorcycle instruction permit upon presentation of documented evidence that the permittee is enrolled in a motorcycle skills education program as authorized in RCW 46.81A.020 with a class start date prior to the expiration of the third permit. The department may not issue more than three motorcycle instruction permits to an applicant within a five-year period. [2011 c 246 § 1; 2002 c 352 § 17; 1999 c 274 § 10; 1999 c 6 § 25; 1989 c 337 § 9; 1985 ex.s. c 1 § 9; 1985 c 234 § 3; 1982 c 77 § 3.]

Effective dates—2002 c 352: See note following RCW 46.09.410.

Intent—1999 c 6: See note following RCW 46.04.168.

Additional notes found at www.leg.wa.gov

46.20.515 Examination—Emphasis—Administration—Waiver. (1) The motorcycle endorsement examination must emphasize maneuvers necessary for on-street operation, including emergency braking and turning as may be required to avoid an impending collision.

(2) The examination for a two-wheeled motorcycle endorsement and the examination for a three-wheeled motorcycle endorsement must be separate and distinct examinations emphasizing the skills and maneuvers necessary to operate each type of motorcycle.

(3) The department may authorize an entity that has entered into a contract under RCW 46.20.520 to administer the motorcycle endorsement examination.

(4) The department may waive all or part of the examination for persons who satisfactorily complete the voluntary motorcycle operator training and education program authorized under RCW 46.20.520 or who satisfactorily complete a private motorcycle skills education course that has been certified by the department under RCW 46.81A.020. [2011 c 370 § 5; 2003 c 41 § 3; 2002 c 197 § 1; 2001 c 104 § 2; 1999 c 274 § 11; 1982 c 77 § 4.]

Intent—2011 c 370: See note following RCW 28A.220.030.

Inclusion of stakeholder groups in communications to facilitate transition of driver licensing examination administration—2011 c 370: See note following RCW 46.82.450.

[2011 RCW Supp—page 1018]

Short title—Effective date—2003 c 41: See notes following RCW 46.20.500.

Additional notes found at www.leg.wa.gov

46.20.720 Drivers convicted of alcohol offenses. (1) The court may order that after a period of suspension, revocation, or denial of driving privileges, and for up to as long as the court has jurisdiction, any person convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle may drive only a motor vehicle equipped with a functioning ignition interlock. The court shall establish a specific calibration setting at which the interlock will prevent the vehicle from being started. The court shall also establish the period of time for which interlock use will be required.

(2) Under RCW 46.61.5055 and subject to the exceptions listed in that statute, the court shall order any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply for an ignition interlock driver's license from the department under RCW 46.20.385 and to have a functioning ignition interlock device installed on all motor vehicles operated by the person. The court shall order any person participating in a deferred prosecution program under RCW 10.05.020 for a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to have a functioning ignition interlock device installed on all motor vehicles operated by the person.

(3) The department shall require that, after any applicable period of suspension, revocation, or denial of driving privileges, a person may drive only a motor vehicle equipped with a functioning ignition interlock device if the person is convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance. The department shall require that a person may drive only a motor vehicle equipped with a functioning ignition interlock device if the person is convicted of a violation of RCW 46.61.5249 or 46.61.500 and is required under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an ignition interlock device on all vehicles operated by the person.

The department may waive the requirement for the use of such a device if it concludes that such devices are not reasonably available in the local area. The installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours.

The ignition interlock device shall be calibrated to prevent the motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more. Subject to the provisions of subsections (4) and (5) of this section, the period of time of the restriction will be no less than:

(a) For a person who has not previously been restricted under this section, a period of one year;

(b) For a person who has previously been restricted under (a) of this subsection, a period of five years;

(c) For a person who has previously been restricted under (b) of this subsection, a period of ten years.

(4) A restriction imposed under subsection (3) of this section shall remain in effect until the department receives a declaration from the person's ignition interlock device vendor, in a form provided or approved by the department, certifying that there have been none of the following incidents in the four consecutive months prior to the date of release:

(a) An attempt to start the vehicle with a breath alcohol concentration of 0.04 or more;

(b) Failure to take or pass any required retest; or

(c) Failure of the person to appear at the ignition interlock device vendor when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the device.

(5) For a person required to install an ignition interlock device pursuant to RCW 46.61.5249(4) or 46.61.500(3), the period of time of the restriction shall be for six months and shall be subject to subsection (4) of this section. [2011 c 293 § 6; 2010 c 269 § 3; 2008 c 282 § 12; 2004 c 95 § 11; 2003 c 366 § 1; 2001 c 247 § 1; 1999 c 331 § 3; 1998 c 210 § 2; 1997 c 229 § 8; 1994 c 275 § 22; 1987 c 247 § 2.]

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Effective date—2010 c 269: See note following RCW 46.20.385.

Effective date—2008 c 282: See note following RCW 46.20.308.

Finding—Intent—1998 c 210: "The legislature finds that driving is a privilege and that the state may restrict that privilege in the interests of public safety. One such reasonable restriction is requiring certain individuals, if they choose to drive, to drive only vehicles equipped with ignition interlock devices. The legislature further finds that the costs of these devices are minimal and are affordable. It is the intent of the legislature that these devices be paid for by the drivers using them and that neither the state nor entities of local government provide any public funding for this purpose." [1998 c 210 § 7.]

Additional notes found at www.leg.wa.gov

Chapter 46.25 RCW

UNIFORM COMMERCIAL DRIVER'S LICENSE ACT

Sections

46.25.010	Definitions. <i>(Effective January 30, 2012.)</i>
46.25.050	Commercial driver's license required—Exceptions, restrictions, reciprocity.
46.25.060	Knowledge and skills test, exemptions—Instruction permit.
46.25.075	Certification—Recordkeeping and administration—Downgrade. <i>(Effective January 30, 2012.)</i>
46.25.080	License contents, classifications, endorsements, restrictions, expiration—Exchange of information. <i>(Effective January 30, 2012.)</i>
46.25.090	Disqualification—Grounds for, period of—Records.

46.25.010 Definitions. *(Effective January 30, 2012.)*

The definitions set forth in this section apply throughout this chapter.

(1) "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred milliliters of blood; or

(b) The number of grams of alcohol per two hundred ten liters of breath.

(3) "Commercial driver's license" (CDL) means a license issued to an individual under chapter 46.20 RCW that has been endorsed in accordance with the requirements of this chapter to authorize the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to 49 U.S.C. Sec. 31309 to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial driver's instruction permit" means a permit issued under RCW 46.25.060(5).

(6) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds or more); or

(b) Has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more); or

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of hazardous materials as defined in this section; or

(e) Is a school bus regardless of weight or size.

(7) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, entry into a deferred prosecution program under chapter 10.05 RCW, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(8) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(9) "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and 46.25.120, "drive" includes operation or physical control of a motor vehicle anywhere in the state.

(10) "Drugs" are those substances as defined by RCW 69.04.009, including, but not limited to, those substances defined by 49 C.F.R. Sec. 40.3.

(11) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single vehicle. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units. If the GVWR of any unit cannot be determined, the actual gross weight will be used. If a vehicle with a GVWR of less than 11,794 kilo-

grams (26,001 pounds or less) has been structurally modified to carry a heavier load, then the actual gross weight capacity of the modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will be used as the GVWR.

(13) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be placarded under subpart F of 49 C.F.R. Part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. Part 73.

(14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(15) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service pursuant to 49 C.F.R. Secs. 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American uniform out-of-service criteria.

(16) "Positive alcohol confirmation test" means an alcohol confirmation test that:

(a) Has been conducted by a breath alcohol technician under 49 C.F.R. Part 40; and

(b) Indicates an alcohol concentration of 0.04 or more.

A report that a person has refused an alcohol test, under circumstances that constitute the refusal of an alcohol test under 49 C.F.R. Part 40, will be considered equivalent to a report of a positive alcohol confirmation test for the purposes of this chapter.

(17) "School bus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

(18) "Serious traffic violation" means:

(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;

(b) Reckless driving, as defined under state or local law;

(c) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person;

(d) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(e) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession; however, any individual who provides proof to the court by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, is not guilty of a "serious traffic offense";

(f) Driving a commercial motor vehicle without the proper class of commercial driver's license endorsement or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported; and

(g) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

(19) "State" means a state of the United States and the District of Columbia.

(20) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. Sec. 40.281.

(21) "Tank vehicle" means a vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Tank vehicles include, but are not limited to cargo tanks and portable tanks. However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

(22) "Type of driving" means one of the following:

(a) "Nonexcepted interstate," which means the CDL holder or applicant operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. Part 391 as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(b) "Excepted interstate," which means the CDL holder or applicant operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, from all or parts of the qualification requirements of 49 C.F.R. Part 391 as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is therefore not required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(c) "Nonexcepted intrastate," which means the CDL holder or applicant operates only in intrastate commerce and is therefore subject to state driver qualification requirements; or

(d) "Excepted intrastate," which means the CDL holder or applicant operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements.

(23) "United States" means the fifty states and the District of Columbia.

(24) "Verified positive drug test" means a drug test result or validity testing result from a laboratory certified under the authority of the federal department of health and human services that:

(a) Indicates a drug concentration at or above the cutoff concentration established under 49 C.F.R. Sec. 40.87; and

(b) Has undergone review and final determination by a medical review officer.

A report that a person has refused a drug test, under circumstances that constitute the refusal of a federal department of transportation drug test under 49 C.F.R. Part 40, will be

considered equivalent to a report of a verified positive drug test for the purposes of this chapter. [2011 c 227 § 1; 2009 c 181 § 2. Prior: 2006 c 327 § 2; 2006 c 50 § 1; 2005 c 325 § 2; 2004 c 187 § 2; 1996 c 30 § 1; 1989 c 178 § 3.]

Effective date—2011 c 227 §§ 1-3: See note following RCW 46.25.075.

Intent—2005 c 325: "It is the intent of the legislature to promote the safety of drivers and passengers on Washington roads and public transportation systems. To this end, Washington has established a reporting requirement for employers of commercial drivers who test positive for unlawful substances. The legislature recognizes that transit operators and their employers are an asset to the public transportation system and continuously strive to provide a safe and efficient mode of travel. In light of this, the legislature further intends that the inclusion of transit employers in the reporting requirements serve only to enhance the current efforts of these dedicated employers and employees as they continue to provide a safe public transportation system to the citizens of Washington." [2005 c 325 § 1.]

Additional notes found at www.leg.wa.gov

46.25.050 Commercial driver's license required—Exceptions, restrictions, reciprocity. (1) Drivers of commercial motor vehicles shall obtain a commercial driver's license as required under this chapter. Except when driving under a commercial driver's instruction permit and a valid automobile or classified license and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds and is in immediate possession of a commercial driver's license and applicable endorsements valid for the vehicle they are driving. However, this requirement does not apply to any person:

(a) Who is the operator of a farm vehicle, and the vehicle is:

(i) Controlled and operated by a farmer;

(ii) Used to transport either agricultural products, which in this section include Christmas trees and wood products harvested from private tree farms and transported by vehicles weighing no more than forty thousand pounds licensed gross vehicle weight, farm machinery, farm supplies, animal manure, animal manure compost, or any combination of those materials to or from a farm;

(iii) Not used in the operations of a common or contract motor carrier; and

(iv) Used within one hundred fifty miles of the person's farm; or

(b) Who is a firefighter or law enforcement officer operating emergency equipment, and:

(i) The firefighter or law enforcement officer has successfully completed a driver training course approved by the director; and

(ii) The firefighter or law enforcement officer carries a certificate attesting to the successful completion of the approved training course; or

(c) Who is operating a recreational vehicle for noncommercial purposes. As used in this section, "recreational vehicle" includes a vehicle towing a horse trailer for a noncommercial purpose; or

(d) Who is operating a commercial motor vehicle for military purposes. This exception is applicable to active duty military personnel; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military techni-

cians (civilians who are required to wear military uniforms); and active duty United States coast guard personnel. This exception is not applicable to United States reserve technicians.

(2) No person may drive a commercial motor vehicle while his or her driving privilege is suspended, revoked, or canceled, while subject to disqualification, or in violation of an out-of-service order. Violations of this subsection shall be punished in the same way as violations of RCW 46.20.342(1).

(3) The department shall to the extent possible enter into reciprocity agreements with adjoining states to allow the waivers described in subsection (1) of this section to apply to drivers holding commercial driver's licenses from those adjoining states. [2011 c 142 § 1; 2006 c 327 § 3; 1995 c 393 § 1; 1990 c 56 § 1; 1989 c 178 § 7.]

46.25.060 Knowledge and skills test, exemptions—Instruction permit. (1)(a) No person may be issued a commercial driver's license unless that person is a resident of this state, has successfully completed a course of instruction in the operation of a commercial motor vehicle that has been approved by the director or has been certified by an employer as having the skills and training necessary to operate a commercial motor vehicle safely, and has passed a knowledge and skills test for driving a commercial motor vehicle that complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R. part 383, subparts G and H, and has satisfied all other requirements of the CMVSA in addition to other requirements imposed by state law or federal regulation. The tests must be prescribed and conducted by the department. In addition to the fee charged for issuance or renewal of any license, the applicant shall pay a fee of no more than ten dollars for each classified knowledge examination, classified endorsement knowledge examination, or any combination of classified license and endorsement knowledge examinations. The applicant shall pay a fee of no more than one hundred dollars for each classified skill examination or combination of classified skill examinations conducted by the department.

(b) The department may authorize a person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency, or instrumentality of local government, to administer the skills test specified by this section under the following conditions:

(i) The test is the same which would otherwise be administered by the state;

(ii) The third party has entered into an agreement with the state that complies with the requirements of 49 C.F.R. part 383.75; and

(iii) The director has adopted rules as to the third party testing program and the development and justification for fees charged by any third party.

(c) If the applicant's primary use of a commercial driver's license is for any of the following, then the applicant shall pay a fee of no more than seventy-five dollars for each classified skill examination or combination of classified skill examinations whether conducted by the department or a third-party tester:

(i) The test is the same which would otherwise be administered by the state;

(ii) The third party has entered into an agreement with the state that complies with the requirements of 49 C.F.R. part 383.75; and

(iii) The director has adopted rules as to the third party testing program and the development and justification for fees charged by any third party.

(i) Public benefit not-for-profit corporations that are federally supported head start programs; or

(ii) Public benefit not-for-profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405(2).

(2) The department shall work with the office of the superintendent of public instruction to develop modified P1 and P2 skill examinations that also include the skill examination components required to obtain an "S" endorsement. In no event may a new applicant for an "S" endorsement be required to take two separate examinations to obtain an "S" endorsement and either a P1 or P2 endorsement, unless that applicant is upgrading his or her existing commercial driver's license to include an "S" endorsement. The combined P1/S or P2/S skill examination must be offered to the applicant at the same cost as a regular P1 or P2 skill examination.

(3)(a) The department may waive the skills test and the requirement for completion of a course of instruction in the operation of a commercial motor vehicle specified in this section for a commercial driver's license applicant who meets the requirements of 49 C.F.R. part 383.77.

(b) An applicant who operates a commercial motor vehicle for agribusiness purposes is exempt from the course of instruction completion and employer skills and training certification requirements under this section. By January 1, 2010, the department shall submit recommendations regarding the continuance of this exemption to the transportation committees of the legislature. For purposes of this subsection (3)(b), "agribusiness" means a private carrier who in the normal course of business primarily transports:

(i) Farm machinery, farm equipment, implements of husbandry, farm supplies, and materials used in farming;

(ii) Agricultural inputs, such as seed, feed, fertilizer, and crop protection products;

(iii) Unprocessed agricultural commodities, as defined in RCW 17.21.020, where such commodities are produced by farmers, ranchers, vineyardists, or orchardists; or

(iv) Any combination of (b)(i) through (iii) of this subsection.

The department shall notify the transportation committees of the legislature if the federal government takes action affecting the exemption provided in this subsection (3)(b).

(4) A commercial driver's license or commercial driver's instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked, or canceled in any state, nor may a commercial driver's license be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all such licenses, which must be returned to the issuing state for cancellation.

(5)(a) The department may issue a commercial driver's instruction permit to an applicant who is at least eighteen years of age and holds a valid Washington state driver's license and who has submitted a proper application, passed the general knowledge examination required for issuance of a commercial driver's license under subsection (1) of this section, and paid the appropriate fee for the knowledge examination and an application fee of ten dollars.

(b) A commercial driver's instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period.

(c) The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle. The holder of a commercial driver's instruction permit is not authorized to operate a commercial motor vehicle transporting hazardous materials.

(d) The department shall transmit the fees collected for commercial driver's instruction permits to the state treasurer. [2011 c 153 § 1; 2009 c 339 § 1; 2007 c 418 § 1; 2004 c 187 § 3; 2002 c 352 § 18; 1989 c 178 § 8.]

Effective date—2011 c 153: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 c 153 § 2.]

Effective date—2007 c 418: "This act takes effect January 15, 2008." [2007 c 418 § 2.]

Effective dates—2002 c 352: See note following RCW 46.09.410.

46.25.075 Certification—Recordkeeping and administration—Downgrade. (Effective January 30, 2012.)

(1)(a) Any person applying for a CDL must certify that he or she is or expects to be engaged in one of the following types of driving:

(i) Nonexcepted interstate;

(ii) Excepted interstate;

(iii) Nonexcepted intrastate; or

(iv) Excepted intrastate.

(b) From January 30, 2012, to January 30, 2014, the department may require that any person holding a CDL prior to January 30, 2012, must provide the department with the certification required under (a) of this subsection. The CDL of a person failing to submit the required certification is subject to downgrade under subsection (4) of this section.

(2) A CDL applicant or holder who certifies under subsection (1)(a)(i) of this section that he or she is or expects to be engaged in nonexcepted interstate commerce must provide a copy of a medical examiner's certificate prepared by a medical examiner, as defined in 49 C.F.R. Sec. 390.5 as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section. Upon submission, a copy of the medical examiner's certificate must be date-stamped by the department. A CDL holder who certifies under subsection (1)(a)(i) of this section must submit a copy of each subsequently issued medical examiner's certificate.

(3) For each operator of a commercial motor vehicle required to have a commercial driver's license, the department must meet the following requirements:

(a)(i) The driver's self-certification of type of driving under subsection (1) of this section must be maintained on the driver's record and the CDLIS driver record;

(ii) The copy of a medical examiner's certificate, when submitted under subsection (2) of this section, must by [be] retained for three years beyond the date the certificate was issued; and

(iii) When a medical examiner's certificate is submitted under subsection (2) of this section, the information required under 49 C.F.R. Sec. 383.73(j)(1)(iii) as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section must be posted to the CDLIS driver record within ten calendar days from the date submitted. The indicator of medical certification status, such as "certified" or "not-certified," must be maintained on the driver's record.

(b) Within ten calendar days of the driver's medical certification status expiring or a medical variance expiring or being rescinded, the medical certification status of the driver must be updated to "not-certified."

(c) Within ten calendar days of receiving information from the federal motor carrier safety administration regarding issuance or renewal of a medical variance for a driver, the department must update the CDLIS driver record to include the medical variance information.

(4)(a) If a driver's medical certification or medical variance expires, or the federal motor carrier safety administration notifies the department that a medical variance was removed or rescinded, the department must:

(i) Notify the driver of his or her "not-certified" medical certification status and that the CDL privilege will be removed from the driver's license unless the driver submits a current medical certificate or medical variance, or changes his or her self-certification to driving only in excepted or intrastate commerce; and

(ii) Initiate procedures for downgrading the license. The CDL downgrade must be completed and recorded within sixty days of the driver's medical certification status becoming "not-certified" to operate a commercial motor vehicle.

(b) Beginning January 30, 2014, if a driver fails to provide the department with the certification required in subsection (1) of this section, or a current medical examiner's certificate if the driver self-certifies under subsection (1)(a)(i) of this section that he or she is operating in nonexcepted interstate commerce as required in subsection (2) of this section, the department must mark the CDLIS driver record as "not-certified" and initiate a CDL downgrade in accordance with (a)(ii) of this subsection.

(c) A driver whose CDL has been downgraded under this subsection may restore the CDL privilege by providing the necessary certifications or medical variance information to the department. [2011 c 227 § 3.]

Effective date—2011 c 227 §§ 1-3: "Sections 1 through 3 of this act take effect January 30, 2012." [2011 c 227 § 7.]

46.25.080 License contents, classifications, endorsements, restrictions, expiration—Exchange of information. (*Effective January 30, 2012.*) (1) The commercial driver's license must be marked "commercial driver's license" or "CDL," and must be, to the maximum extent practicable, tamperproof. It must include, but not be limited to, the following information:

- (a) The name and residence address of the person;
- (b) The person's color photograph;
- (c) A physical description of the person including sex, height, weight, and eye color;
- (d) Date of birth;

(e) The person's social security number or any number or identifier deemed appropriate by the department;

(f) The person's signature;

(g) The class or type of commercial motor vehicle or vehicles that the person is authorized to drive, together with any endorsements or restrictions;

(h) The name of the state; and

(i) The dates between which the license is valid.

(2) Commercial driver's licenses may be issued with the classifications, endorsements, and restrictions set forth in this subsection. The holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except motorcycles and vehicles that require an endorsement, unless the proper endorsement appears on the license.

(a) Licenses may be classified as follows:

(i) Class A is a combination of vehicles with a gross combined weight rating (GCWR) of 26,001 pounds or more, if the GVWR of the vehicle or vehicles being towed is in excess of 10,000 pounds.

(ii) Class B is a single vehicle with a GVWR of 26,001 pounds or more, and any such vehicle towing a vehicle not in excess of 10,000 pounds.

(iii) Class C is a single vehicle with a GVWR of less than 26,001 pounds or any such vehicle towing a vehicle with a GVWR not in excess of 10,000 pounds consisting of:

(A) Vehicles designed to transport sixteen or more passengers, including the driver; or

(B) Vehicles used in the transportation of hazardous materials.

(b) The following endorsements and restrictions may be placed on a license:

(i) "H" authorizes the driver to drive a vehicle transporting hazardous materials.

(ii) "K" restricts the driver to vehicles not equipped with air brakes.

(iii) "T" authorizes driving double and triple trailers.

(iv) "P1" authorizes driving all vehicles, other than school buses, carrying passengers.

(v) "P2" authorizes driving vehicles with a GVWR of less than 26,001 pounds, other than school buses, carrying sixteen or more passengers, including the driver.

(vi) "N" authorizes driving tank vehicles.

(vii) "X" represents a combination of hazardous materials and tank vehicle endorsements.

(viii) "S" authorizes driving school buses.

(ix) "V" means that the driver has been issued a medical variance.

The license may be issued with additional endorsements and restrictions as established by rule of the director.

(3) All school bus drivers must have either a "P1" or "P2" endorsement depending on the GVWR of the school bus being driven.

(4) Before issuing a commercial driver's license, the department shall obtain driving record information:

(a) Through the commercial driver's license information system;

(b) Through the national driver register;

(c) From the current state of record; and

(d) From all states where the applicant was previously licensed over the last ten years to drive any type of motor vehicle.

A check under (d) of this subsection need be done only once, either at the time of application for a new commercial driver's license, or upon application for a renewal of a commercial driver's license for the first time after July 1, 2005, provided a notation is made on the driver's record confirming that the driving record check has been made and noting the date it was completed.

(5) Within ten days after issuing a commercial driver's license, the department must notify the commercial driver's license information system of the information required under 49 C.F.R. Sec. 383.73 as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section and provide all information required to ensure identification of the person.

(6) A commercial driver's license shall expire in the same manner as provided in RCW 46.20.181.

(7) When applying for renewal of a commercial driver's license, the applicant shall:

(a) Complete the application form required by RCW 46.25.070(1), providing updated information and required certifications;

(b) Submit the application to the department in person; and

(c) If the applicant wishes to retain a hazardous materials endorsement, take and pass the written test for a hazardous materials endorsement. [2011 c 227 § 2. Prior: 2004 c 249 § 8; 2004 c 187 § 5; 1996 c 30 § 2; 1989 c 178 § 10.]

Effective date—2011 c 227 §§ 1-3: See note following RCW 46.25.075.

Effective date—2004 c 187 §§ 1, 5, 7, 8, and 10: See note following RCW 46.20.308.

Additional notes found at www.leg.wa.gov

46.25.090 Disqualification—Grounds for, period of—Records. (1) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to RCW 46.20.308 or 46.25.120, or if the person has been convicted of a first violation, within this or any other jurisdiction, of:

(a) Driving a motor vehicle under the influence of alcohol or any drug;

(b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more, or driving a noncommercial motor vehicle while the alcohol concentration in the person's system is 0.08 or more, or is 0.02 or more if the person is under age twenty-one, as determined by any testing methods approved by law in this state or any other state or jurisdiction;

(c) Leaving the scene of an accident involving a motor vehicle driven by the person;

(d) Using a motor vehicle in the commission of a felony;

(e) Refusing to submit to a test or tests to determine the driver's alcohol concentration or the presence of any drug while driving a motor vehicle;

(f) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial

motor vehicle, the driver's commercial driver's license is revoked, suspended, or canceled, or the driver is disqualified from operating a commercial motor vehicle;

(g) Causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the crimes of vehicular homicide and negligent homicide.

If any of the violations set forth in this subsection occurred while transporting hazardous material, the person is disqualified for a period of not less than three years.

(2) A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified in subsection (1) of this section, or any combination of those offenses, arising from two or more separate incidents.

(3) The department may adopt rules, in accordance with federal regulations, establishing guidelines, including conditions, under which a disqualification for life under subsection (2) of this section may be reduced to a period of not less than ten years.

(4) A person is disqualified from driving a commercial motor vehicle for life who uses a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW.

(5)(a) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than sixty days if:

(A) Convicted of or found to have committed a second serious traffic violation while driving a commercial motor vehicle; or

(B) Convicted of reckless driving, where there has been a prior serious traffic violation; or

(ii) Not less than one hundred twenty days if:

(A) Convicted of or found to have committed a third or subsequent serious traffic violation while driving a commercial motor vehicle; or

(B) Convicted of reckless driving, where there has been two or more prior serious traffic violations.

(b) The disqualification period under (a)(ii) of this subsection must be in addition to any other previous period of disqualification.

(c) For purposes of determining prior serious traffic violations under this subsection, each conviction of or finding that a driver has committed a serious traffic violation while driving a commercial motor vehicle or noncommercial motor vehicle, arising from a separate incident occurring within a three-year period, must be counted.

(6) A person is disqualified from driving a commercial motor vehicle for a period of:

(a) Not less than one hundred eighty days nor more than one year if convicted of or found to have committed a first violation of an out-of-service order while driving a commercial vehicle;

(b) Not less than two years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed two violations of out-of-service orders while driving a commercial motor vehicle in separate incidents;

(c) Not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed three or more violations of out-of-service orders while driving commercial motor vehicles in separate incidents;

(d) Not less than one hundred eighty days nor more than two years if the person is convicted of or is found to have committed a first violation of an out-of-service order while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver. A person is disqualified for a period of not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver.

(7) A person is disqualified from driving a commercial motor vehicle if a report has been received by the department under RCW 46.25.125 that the person has received a verified positive drug test or positive alcohol confirmation test as part of the testing program conducted under 49 C.F.R. 40. A disqualification under this subsection remains in effect until the person undergoes a drug and alcohol assessment by a substance abuse professional meeting the requirements of 49 C.F.R. 40, and the person presents evidence of satisfactory participation in or successful completion of a drug or alcohol treatment and/or education program as recommended by the substance abuse professional, and until the person has met the requirements of RCW 46.25.100. The substance abuse professional shall forward a diagnostic evaluation and treatment recommendation to the department of licensing for use in determining the person's eligibility for driving a commercial motor vehicle. Persons who are disqualified under this subsection more than twice in a five-year period are disqualified for life.

(8)(a) A person is disqualified from driving a commercial motor vehicle for the period of time specified in (b) of this subsection if he or she is convicted of or is found to have committed one of the following six offenses at a railroad-highway grade crossing while operating a commercial motor vehicle in violation of a federal, state, or local law or regulation:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement officer at the crossing;

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than sixty days if the driver is convicted of or is found to have committed a first violation of a railroad-highway grade crossing violation;

(ii) Not less than one hundred twenty days if the driver is convicted of or is found to have committed a second railroad-highway grade crossing violation in separate incidents within a three-year period;

(iii) Not less than one year if the driver is convicted of or is found to have committed a third or subsequent railroad-highway grade crossing violation in separate incidents within a three-year period.

(9) A person is disqualified from driving a commercial motor vehicle for not more than one year if a report has been received by the department from the federal motor carrier safety administration that the person's driving has been determined to constitute an imminent hazard as defined by 49 C.F.R. 383.5. A person who is simultaneously disqualified from driving a commercial motor vehicle under this subsection and under other provisions of this chapter, or under 49 C.F.R. 383.52, shall serve those disqualification periods concurrently.

(10) Within ten days after suspending, revoking, or canceling a commercial driver's license or disqualifying a driver from operating a commercial motor vehicle, the department shall update its records to reflect that action. [2011 c 227 § 4; 2006 c 327 § 4; 2005 c 325 § 5; 2004 c 187 § 7. Prior: 2002 c 272 § 3; 2002 c 193 § 1; 1996 c 30 § 3; 1989 c 178 § 11.]

Intent—2005 c 325: See note following RCW 46.25.010.

Effective date—2004 c 187 §§ 1, 5, 7, 8, and 10: See note following RCW 46.20.308.

Additional notes found at www.leg.wa.gov

Chapter 46.30 RCW

MANDATORY LIABILITY INSURANCE

Sections

46.30.020 Liability insurance or other financial responsibility required—Violations—Exceptions.

46.30.020 Liability insurance or other financial responsibility required—Violations—Exceptions. (1)(a) No person may operate a motor vehicle subject to registration under chapter 46.16A RCW in this state unless the person is insured under a motor vehicle liability policy with liability limits of at least the amounts provided in RCW 46.29.090, is self-insured as provided in RCW 46.29.630, is covered by a certificate of deposit in conformance with RCW 46.29.550, or is covered by a liability bond of at least the amounts provided in RCW 46.29.090. Written proof of financial responsibility for motor vehicle operation must be provided on the request of a law enforcement officer in the format specified under RCW 46.30.030.

(b) A person who drives a motor vehicle that is required to be registered in another state that requires drivers and owners of vehicles in that state to maintain insurance or financial responsibility shall, when requested by a law enforcement officer, provide evidence of financial responsibility or insurance as is required by the laws of the state in which the vehicle is registered.

(c) When asked to do so by a law enforcement officer, failure to display an insurance identification card as specified under RCW 46.30.030 creates a presumption that the person does not have motor vehicle insurance.

(d) Failure to provide proof of motor vehicle insurance is a traffic infraction and is subject to penalties as set by the supreme court under RCW 46.63.110 or community restitution.

(2) If a person cited for a violation of subsection (1) of this section appears in person before the court or a violations bureau and provides written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, the citation shall be dismissed and the court or violations bureau may assess court administrative costs of twenty-five dollars at the time of dismissal. In lieu of personal appearance, a person cited for a violation of subsection (1) of this section may, before the date scheduled for the person's appearance before the court or violations bureau, submit by mail to the court or violations bureau written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, in which case the citation shall be dismissed without cost, except that the court or violations bureau may assess court administrative costs of twenty-five dollars at the time of dismissal.

(3) The provisions of this chapter shall not govern:

(a) The operation of a motor vehicle registered under RCW 46.18.255, governed by RCW 46.16A.170, or registered with the Washington utilities and transportation commission as common or contract carriers; or

(b) The operation of a motorcycle as defined in RCW 46.04.330, a motor-driven cycle as defined in RCW 46.04.332, or a moped as defined in RCW 46.04.304.

(4) RCW 46.29.490 shall not be deemed to govern all motor vehicle liability policies required by this chapter but only those certified for the purposes stated in chapter 46.29 RCW. [2011 c 171 § 76; 2010 c 161 § 1115; 2003 c 221 § 1; 2002 c 175 § 35; 1991 sp.s. c 25 § 1; 1991 c 339 § 24; 1989 c 353 § 2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective date—2002 c 175: See note following RCW 7.80.130.

Notice of liability insurance requirement: RCW 46.16A.130.

Chapter 46.32 RCW VEHICLE INSPECTION

Sections

46.32.080	Commercial motor vehicle safety enforcement—Application for department of transportation number.
46.32.100	Violations—Penalties—Out-of-service orders.
46.32.120	Application to state and publicly owned vehicles.

46.32.080 Commercial motor vehicle safety enforcement—Application for department of transportation number. (1) The Washington state patrol is responsible for enforcement of safety requirements for commercial motor

vehicles including, but not limited to, safety audits and compliance reviews. Those motor carriers that have operations in this state are subject to the patrol's safety audits and compliance review programs. Compliance reviews may result in the initiation of an enforcement action, which may include monetary penalties. The utilities and transportation commission is responsible for adoption and enforcement of safety requirements for vehicles operated by entities holding authority under chapters 81.66, 81.68, 81.70, and 81.77 RCW, and by household goods carriers holding authority under chapter 81.80 RCW.

(2) Motor vehicles owned and operated by farmers in the transportation of their own farm, orchard, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, or dairy, must have a department of transportation number, as defined in RCW 46.16A.010, but are exempt from safety audits and compliance reviews.

(3) All records and documents required of motor carriers with operations in this state must be available for review and inspection during normal business hours. Duly authorized agents of the state patrol conducting safety audits and compliance reviews may enter the motor carrier's place of business, or any location where records or equipment are located, at reasonable times and without advanced notice. Motor carriers who do not permit duly authorized agents to enter their place of business, or any location where records or equipment are located, for safety audits and compliance reviews are subject to enforcement action, including a monetary penalty.

(4)(a) All motor carriers with a commercial motor vehicle, as defined in RCW 46.16A.010, that operate in this state must apply for a department of transportation number, as defined in RCW 46.16A.010, by January 1, 2008. All entities with authority under chapters 81.66, 81.68, 81.70, and 81.77 RCW, and all household goods carriers with authority under chapter 81.80 RCW, must apply for a department of transportation number by January 1, 2010.

(b) All motor carriers operating in this state who (i) have not applied under (a) of this subsection for a department of transportation number, as defined in RCW 46.16A.010, and (ii) have a commercial motor vehicle that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more, must apply for a department of transportation number by January 1, 2011.

(c) The state patrol may deny an application if the applicant does not meet the requirements and standards under this chapter. The state patrol shall not issue a department of transportation number to an applicant who at the time of application has been placed out of service by the federal motor carrier safety administration. Commercial motor vehicles must be marked as prescribed by the state patrol. Those applicants with a current United States department of transportation number are exempt from applying for a department of transportation number.

(d) The state patrol may (i) place a motor carrier out of service or (ii) refuse to issue or recognize as valid a department of transportation number to an applicant who: (A) Formerly held a department of transportation number that was placed out of service for cause, and where cause has not been removed; (B) is a subterfuge for the real party in interest

whose department of transportation number was placed out of service for cause, and where cause has not been removed; (C) as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, had a department of transportation number and was placed out of service for cause, and where cause has not been removed; or (D) has an unsatisfied debt to the state assessed under this chapter.

(e) Upon a finding by the chief of the state patrol or the chief's designee that a motor carrier is an imminent hazard or danger to the public health, safety, or welfare, the state patrol shall notify the department, and the department shall revoke the registrations for all commercial motor vehicles that are owned by the motor carrier subject to RCW 46.32.080. In determining whether a motor carrier is an imminent hazard or danger to the public health, safety, or welfare, the chief or the chief's designee shall consider safety factors. [2011 c 171 § 77; 2009 c 46 § 1; 2007 c 419 § 10; 1995 c 272 § 1.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—2007 c 419 § 10: "Section 10 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2007]." [2007 c 419 § 19.]

Findings—Short title—2007 c 419: See notes following RCW 46.16A.010.

Transfer of powers, duties, and functions: "(1) All powers, duties, and functions of the utilities and transportation commission pertaining to safety inspections of commercial vehicles, including but not limited to terminal safety audits, except for those carriers subject to the economic regulation of the commission, are transferred to the Washington state patrol.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the Washington state patrol. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the utilities and transportation commission in carrying out the powers, functions, and duties transferred shall be made available to the Washington state patrol. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the Washington state patrol.

(b) Any appropriations made to the utilities and transportation commission for carrying out the powers, functions, and duties transferred shall, on January 1, 1996, be transferred and credited to the Washington state patrol.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the utilities and transportation commission engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the Washington state patrol. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the Washington state patrol to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service. These employees will only be transferred upon successful completion of the Washington state patrol background investigation.

(4) All rules and all pending business before the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the Washington state patrol. All existing contracts and obligations remain in full force and shall be performed by the Washington state patrol.

(5) The transfer of the powers, duties, functions, and personnel of the utilities and transportation commission does not affect the validity of any act performed before January 1, 1996.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the

state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) Nothing contained in this section alters an existing collective bargaining unit or the provisions of an existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law." [1995 c 272 § 4.]

Additional notes found at www.leg.wa.gov

46.32.100 Violations—Penalties—Out-of-service orders. (1)(a) In addition to all other penalties provided by law, and except as provided otherwise in (a)(i), (ii), or (iii) of this subsection, a commercial motor vehicle that is subject to compliance reviews under this chapter and an officer, agent, or employee of a company operating a commercial motor vehicle who violates or who procures, aids, or abets in the violation of this title or any order or rule of the state patrol is liable for a penalty of one hundred dollars for each violation.

(i) It is a violation of this chapter for a person operating a commercial motor vehicle to fail to comply with the requirements of 49 C.F.R. Pt. 382, controlled substances and alcohol use and testing, 49 C.F.R. Sec. 391.15, disqualification of drivers, and 49 C.F.R. Sec. 396.9(c)(2), moving a vehicle placed out of service before the out of service defects have been satisfactorily repaired. For each violation the person is liable for a penalty of five hundred dollars.

(ii) The driver of a commercial motor vehicle who is convicted of violating an out-of-service order is liable for a penalty of at least two thousand five hundred dollars for a first violation, and not less than five thousand dollars for [a] second or subsequent violation.

(iii) An employer who allows the operation of a commercial motor vehicle when there is an out-of-service order is liable for a penalty of at least two thousand seven hundred fifty dollars but not more than twenty-five thousand dollars for each violation.

(iv) Each violation under this subsection (1)(a) is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(b) In addition to all other penalties provided by law, any motor carrier, company, or any officer or agent of a motor carrier or company operating a commercial motor vehicle subject to compliance reviews under this chapter who refuses entry or to make the required records, documents, and vehicles available to a duly authorized agent of the state patrol is liable for a penalty of at least five thousand dollars as well as an out-of-service order being placed on the department of transportation number, as defined in RCW 46.16A.010, and vehicle registration to operate. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(c) A motor carrier operating a commercial motor vehicle after receiving a final unsatisfactory rating or being placed out of service is liable for a penalty of not more than eleven thousand dollars for each violation. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(d) A high-risk carrier is liable for double the amount of the penalty of a prior violation if the high-risk carrier repeats the same violation during a follow-up compliance review. Each repeat violation is a separate and distinct offense, and in

case of a repeat continuing violation every day's continuance is a separate and distinct violation.

(2) The Washington state patrol may place an out-of-service order on a department of transportation number, as defined in RCW 46.16A.010, for violations of this chapter or for nonpayment of any monetary penalties assessed by the state patrol or the utilities and transportation commission, as a result of compliance reviews, or for violations of cease and desist orders issued by the utilities and transportation commission. The state patrol shall notify the department of licensing when an out-of-service order has been placed on a motor carrier's department of transportation number. The state patrol shall notify the motor carrier when there has been an out-of-service order placed on the motor carrier's department of transportation number and the vehicle registrations have been revoked by sending a notice by first-class mail using the last known address for the registered or legal owner or owners, and recording the transmittal on an affidavit of first-class mail. Notices under this section fulfill the requirements of RCW 46.12.550. Motor carriers may not be eligible for a new department of transportation number, vehicle registration, or temporary permits to operate unless the violations that resulted in the out-of-service order have been corrected.

(3) Any penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the state patrol describing the violation and advising the person that the penalty is due.

(a)(i) Any motor carrier who incurs a penalty as provided in this section, except for a high-risk carrier that incurs a penalty for a repeat violation during a follow-up compliance review, may, upon written application, request that the state patrol mitigate the penalty. An application for mitigation must be received by the state patrol within twenty days of the receipt of notice.

(ii) The state patrol may decline to consider any application for mitigation.

(b) Any motor carrier who incurs a penalty as provided in this section has a right to an administrative hearing under chapter 34.05 RCW to contest the violation or the penalty imposed, or both. In all such hearings, the procedure and rules of evidence are as specified in chapter 34.05 RCW except as otherwise provided in this chapter. Any request for an administrative hearing must be made in writing and must be received by the state patrol within twenty days after the later of (i) receipt of the notice imposing the penalty, or (ii) disposition of a request for mitigation, or the right to a hearing is waived.

(c) All penalties recovered under this section shall be paid into the state treasury and credited to the state patrol highway account of the motor vehicle fund. [2011 c 227 § 5; 2010 c 161 § 1116; 2009 c 46 § 4; 2007 c 419 § 12; 2005 c 444 § 1; 1998 c 172 § 1; 1995 c 272 § 3.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Findings—Short title—2007 c 419: See notes following RCW 46.16A.010.

Additional notes found at www.leg.wa.gov

46.32.120 Application to state and publicly owned vehicles. This chapter does not apply to vehicles exempted

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from registration by RCW 46.16A.170. [2011 c 171 § 78; 2009 c 46 § 7.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Chapter 46.37 RCW

VEHICLE LIGHTING AND OTHER EQUIPMENT

Sections

46.37.010	Scope and effect of regulations—General penalty.
46.37.470	Air conditioning equipment.
46.37.480	Television viewers—Earphones.
46.37.518	Street rod, custom, and kit vehicles—Optional and required equipment.
46.37.5185	Street rod and custom vehicles—Blue dot taillights.
46.37.650	Air bags—Installation of previously deployed—Penalty.

46.37.010 Scope and effect of regulations—General penalty. (1) It is a traffic infraction for any person to drive or move, or for a vehicle owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles that:

(a) Is in such unsafe condition as to endanger any person;

(b) Is not at all times equipped with such lamps and other equipment in proper working condition and adjustment as required by this chapter or by rules issued by the Washington state patrol;

(c) Contains any parts in violation of this chapter or rules issued by the Washington state patrol.

(2) It is a traffic infraction for any person to do any act forbidden or fail to perform any act required under this chapter or rules issued by the Washington state patrol.

(3) Nothing contained in this chapter or the state patrol's regulations shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter or the state patrol's regulations.

(4) The provisions of the chapter and the state patrol's regulations with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

(5) No owner or operator of a farm tractor, self-propelled unit of farm equipment, or implement of husbandry shall be guilty of a crime or subject to penalty for violation of RCW 46.37.160 as now or hereafter amended unless such violation occurs on a public highway.

(6) It is a traffic infraction for any person to sell or offer for sale vehicle equipment which is required to be approved by the state patrol as prescribed in RCW 46.37.005 unless it has been approved by the state patrol.

(7) The provisions of this chapter with respect to equipment required on vehicles shall not apply to:

(a) Motorcycles or motor-driven cycles except as herein made applicable;

(b) Golf carts, as defined in RCW 46.04.1945, operating within a designated golf cart zone as described in RCW 46.08.175, except as provided in RCW 46.08.175(8).

(8) This chapter does not apply to off-road vehicles used on nonhighway roads or used on streets, roads, or highways as authorized under RCW 46.09.360.

(9) This chapter does not apply to vehicles used by the state parks and recreation commission exclusively for park

maintenance and operations upon public highways within state parks.

(10) Notices of traffic infraction issued to commercial drivers under the provisions of this chapter with respect to equipment required on commercial motor vehicles shall not be considered for driver improvement purposes under chapter 46.20 RCW.

(11) Whenever a traffic infraction is chargeable to the owner or lessee of a vehicle under subsection (1) of this section, the driver shall not be arrested or issued a notice of traffic infraction unless the vehicle is registered in a jurisdiction other than Washington state, or unless the infraction is for an offense that is clearly within the responsibility of the driver.

(12) Whenever the owner or lessee is issued a notice of traffic infraction under this section the court may, on the request of the owner or lessee, take appropriate steps to make the driver of the vehicle, or any other person who directs the loading, maintenance, or operation of the vehicle, a codefendant. If the codefendant is held solely responsible and is found to have committed the traffic infraction, the court may dismiss the notice against the owner or lessee. [2011 c 171 § 79; 2010 c 217 § 6. Prior: 2006 c 306 § 1; 2006 c 212 § 5; 2005 c 213 § 7; 1997 c 241 § 14; 1989 c 178 § 22; 1987 c 330 § 707; 1979 ex.s. c 136 § 69; 1977 ex.s. c 355 § 1; 1963 c 154 § 1; 1961 c 12 § 46.37.010; prior: 1955 c 269 § 1; prior: 1937 c 189 § 14, part; RRS § 6360-14, part; RCW 46.40.010, part; 1929 c 178 § 2; 1927 c 309 § 19; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part; 1915 c 142 § 21, part; RRS § 6362-19.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—Construction—Effective date—2005 c 213: See notes following RCW 46.09.300.

Moving defective vehicle: RCW 46.32.060.

Additional notes found at www.leg.wa.gov

46.37.470 Air conditioning equipment. (1) "Air conditioning equipment," as used or referred to in this section, means mechanical vapor compression refrigeration equipment that is used to cool the driver's or passenger compartment of any motor vehicle.

(2) Air conditioning equipment must be manufactured, installed, and maintained with due regard for the safety of the occupants of the vehicle and the public. Air conditioning equipment may not contain any refrigerant that is toxic to persons or that is flammable, unless the refrigerant is allowed under the department of ecology's motor vehicle emission standards adopted under RCW 70.120A.010.

(3) The state patrol may enforce safety requirements, regulations, and specifications consistent with the requirements of this section applicable to air conditioning equipment which must correlate with and, so far as possible, conform to the current recommended practice or standard applicable to air conditioning equipment approved by the society of automotive engineers.

(4) A person may not sell or equip, for use in this state, a new motor vehicle with any air conditioning equipment unless it complies with the requirements of this section.

(5) A person may not register or license for use on any highway any new motor vehicle equipped with any air condi-

tioning equipment unless the equipment complies with the requirements of this section. [2011 c 224 § 1; 2009 c 256 § 1; 1987 c 330 § 726; 1961 c 12 § 46.37.470. Prior: 1955 c 269 § 47.]

Additional notes found at www.leg.wa.gov

46.37.480 Television viewers—Earphones. (1) No person shall drive any motor vehicle equipped with any television viewer, screen, or other means of visually receiving a television broadcast when the moving images are visible to the driver while operating the motor vehicle on a public road, except for live video of the motor vehicle backing up. This subsection does not apply to law enforcement vehicles communicating with mobile computer networks.

(2) No person shall operate any motor vehicle on a public highway while wearing any headset or earphones connected to any electronic device capable of receiving a radio broadcast or playing a sound recording for the purpose of transmitting a sound to the human auditory senses and which headset or earphones muffle or exclude other sounds. This subsection does not apply to students and instructors participating in a Washington state motorcycle safety program.

(3) This section does not apply to authorized emergency vehicles, motorcyclists wearing a helmet with built-in headsets or earphones as approved by the Washington state patrol, or motorists using hands-free, wireless communications systems, as approved by the equipment section of the Washington state patrol. [2011 c 368 § 1; 1996 c 34 § 1; 1991 c 95 § 1; 1988 c 227 § 6; 1987 c 176 § 1; 1977 ex.s. c 355 § 40; 1961 c 12 § 46.37.480. Prior: 1949 c 196 § 11; Rem. Supp. 1949 § 6360-98d. Formerly RCW 46.36.150.]

Additional notes found at www.leg.wa.gov

46.37.518 Street rod, custom, and kit vehicles—Optional and required equipment. Notwithstanding the requirements of this chapter, hoods and bumpers are optional equipment on street rod vehicles, custom vehicles, and kit vehicles. Street rod vehicles, custom vehicles, and kit vehicles must comply with fender requirements under RCW 46.37.500(2) and the windshield requirement of RCW 46.37.410(1). [2011 c 114 § 9; 1996 c 225 § 12.]

Effective date—2011 c 114: See note following RCW 46.04.572.

Finding—1996 c 225: See note following RCW 46.04.125.

46.37.5185 Street rod and custom vehicles—Blue dot taillights. A street rod or custom vehicle may use blue dot taillights for stop lamps, rear turning indicator lamps, rear hazard lamps, and rear reflectors. For the purposes of this section, "blue dot taillight" means a red lamp installed in the rear of a motor vehicle containing a blue or purple insert that is not more than one inch in diameter. [2011 c 114 § 8.]

Effective date—2011 c 114: See note following RCW 46.04.572.

46.37.650 Air bags—Installation of previously deployed—Penalty. (1) A person is guilty of a gross misdemeanor if he or she knew or reasonably should have known that an air bag he or she installs or reinstalls in a vehicle for compensation, or distributes as an auto part, is a previously deployed air bag that is part of an inflatable restraint system.

(2) A person found guilty under subsection (1) of this section shall be punished by a fine of not more than five thousand dollars or by confinement in the county jail for up to three hundred sixty-four days, or both. [2011 c 96 § 33; 2003 c 33 § 2.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Chapter 46.44 RCW SIZE, WEIGHT, LOAD

Sections

- 46.44.037 Combination of units—Lawful operations.
46.44.0915 Heavy haul industrial corridors—Overweight sealed containers and vehicles.
46.44.200 Vehicles or combination of vehicles with weight rating over forty thousand pounds and transporting cattle—Mandatory stops at state patrol-operated ports of entry—Exception—Penalty—Application.

46.44.037 Combination of units—Lawful operations.

Notwithstanding the provisions of RCW 46.44.036 and subject to such rules and regulations governing their operation as may be adopted by the state department of transportation, operation of the following combinations is lawful:

(1) A combination consisting of a truck tractor, a semitrailer, and another semitrailer or a full trailer. In this combination a converter gear used to convert a semitrailer into a full trailer shall be considered to be a part of the full trailer and not a separate vehicle. A converter gear being pulled without load and not used to convert a semitrailer into a full trailer may be substituted in lieu of a full trailer or a semitrailer in any lawful combination;

(2) A combination consisting of a truck tractor carrying a freight compartment no longer than eight feet, a semitrailer, and another semitrailer or full trailer that meets the legal length requirement for a truck and trailer combination set forth in RCW 46.44.030. [2011 c 230 § 1; 1991 c 143 § 2; 1985 c 351 § 2; 1984 c 7 § 53; 1979 ex.s. c 149 § 3; 1975-'76 2nd ex.s. c 64 § 9; 1965 ex.s. c 170 § 37; 1963 ex.s. c 3 § 53; 1961 c 12 § 46.44.037. Prior: 1957 c 273 § 16; 1955 c 384 § 3.]

Additional notes found at www.leg.wa.gov

46.44.0915 Heavy haul industrial corridors—Overweight sealed containers and vehicles. (1)(a) Except as provided in (b) of this subsection, the department of transportation, with respect to state highways maintained within port district property, may, at the request of a port commission, make and enter into agreements with port districts and adjacent jurisdictions or agencies of the districts, for the purpose of identifying, managing, and maintaining short heavy haul industrial corridors within port district property for the movement of overweight sealed containers used in international trade.

(b) The department of transportation shall designate that portion of state route number 97 from the Canadian border to milepost 331.12 as a heavy haul industrial corridor for the movement of overweight vehicles to and from the Oroville railhead. The department may issue special permits to vehicles operating in the heavy haul industrial corridor to carry weight in excess of weight limits established in RCW

46.44.041, but not to exceed a gross vehicle weight of 139,994 pounds.

(2) Except as provided in subsection (1)(b) of this section, the department may issue special permits to vehicles operating in a heavy haul industrial corridor to carry weight in excess of weight limits established in RCW 46.44.041. However, the excess weight on a single axle, tandem axle, or any axle group must not exceed that allowed by RCW 46.44.091 (1) and (2), weight per tire must not exceed six hundred pounds per inch width of tire, and gross vehicle weight must not exceed one hundred five thousand five hundred pounds.

(3) The entity operating or hiring vehicles under subsection (1)(b) of this section or moving overweight sealed containers used in international trade must pay a fee for each special permit of one hundred dollars per month or one thousand dollars annually, beginning from the date of issue, for all movements under the special permit made on state highways within a heavy haul industrial corridor. Within a port district property, under no circumstances are the for hire carriers or rail customers responsible for the purchase or cost of the permits. All funds collected, except the amount retained by authorized agents of the department under RCW 46.44.096, must be forwarded to the state treasurer and deposited in the motor vehicle fund.

(4) For purposes of this section, an overweight sealed container used in international trade, including its contents, is considered nondivisible when transported within a heavy haul industrial corridor defined by the department.

(5) Any agreement entered into by the department as authorized under this section with a port district adjacent to Puget Sound and located within a county that has a population of more than seven hundred thousand, but less than one million, must limit the applicability of any established heavy haul corridor to that portion of state route no. 509 beginning at milepost 0.25 in the vicinity of East 'D' Street and ending at milepost 3.88 in the vicinity of Taylor Way.

(6) The department of transportation may adopt reasonable rules to implement this section. [2011 c 115 § 1; 2008 c 89 § 1; 2005 c 311 § 1.]

46.44.200 Vehicles or combination of vehicles with weight rating over forty thousand pounds and transporting cattle—Mandatory stops at state patrol-operated ports of entry—Exception—Penalty—Application. (1) Upon entering the state, any vehicle or combination of vehicles with a gross vehicle weight rating of more than forty thousand pounds and transporting cattle must immediately stop at a port of entry, which is operated by the Washington state patrol.

(2) The requirement of subsection (1) of this section does not apply to the operator of a vehicle in possession of a pasture permit or cattle consigned to a public auction or sales yard. Nothing in this subsection shall be construed to authorize a vehicle to bypass an open weigh station or port of entry.

(3) Operation of any vehicle or combination of vehicles in violation of this section is prima facie evidence that the owner of the vehicle or combination of vehicles caused or permitted the vehicle or combination of vehicles to be so operated, and the owner is liable for any penalties imposed under this section.

(4) The penalty for failure to comply with this section is one thousand dollars. All fines collected under this section must be deposited in the motor vehicle fund established under RCW 46.68.070 to be used for road maintenance purposes.

(5) The requirements and penalties in this section apply only in a county located east of the crest of the Cascade mountains with a population of at least four hundred fifty thousand and an adjacent county with a population of at least thirteen thousand but less than fifteen thousand.

(6) The Washington state patrol must provide a one-time written notification of the requirements of this section to affected carriers known to have previously entered the state of Washington in the counties described in subsection (5) of this section. The notification requirement is not a defense for a driver from enforcement action if found in violation of this section. Notification must be provided by August 1, 2011. [2011 c 242 § 1.]

Chapter 46.55 RCW

TOWING AND IMPOUNDMENT

Sections

46.55.113 Removal by police officer—Definition.
46.55.130 Notice requirements—Public auction—Accumulation of storage charges.

IMPOUNDMENT AFTER ARREST FOR DRIVING UNDER THE INFLUENCE

46.55.350 Findings—Intent.
46.55.360 Impoundment, when required—Law enforcement powers, duties, and liability immunity—Redemption, when, by whom—Operator liability immunity—Definition.
46.55.370 Law enforcement liability immunity—Reasonable suspicion.

46.55.113 Removal by police officer—Definition. (1) Whenever the driver of a vehicle is arrested for a violation of RCW 46.20.342 or 46.20.345, the vehicle is subject to summary impoundment, pursuant to the terms and conditions of an applicable local ordinance or state agency rule at the direction of a law enforcement officer.

(2) In addition, a police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety under any of the following circumstances:

(a) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

(b) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(c) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

(d) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(e) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(f) Whenever a vehicle without a special license plate, placard, or decal indicating that the vehicle is being used to

transport a person with disabilities under RCW 46.19.010 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;

(g) Upon determining that a person is operating a motor vehicle without a valid and, if required, a specially endorsed driver's license or with a license that has been expired for ninety days or more;

(h) When a vehicle is illegally occupying a truck, commercial loading zone, restricted parking zone, bus, loading, hooded-meter, taxi, street construction or maintenance, or other similar zone where, by order of the director of transportation or chiefs of police or fire or their designees, parking is limited to designated classes of vehicles or is prohibited during certain hours, on designated days or at all times, if the zone has been established with signage for at least twenty-four hours and where the vehicle is interfering with the proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone;

(i) When a vehicle with an expired registration of more than forty-five days is parked on a public street.

(3) When an arrest is made for a violation of RCW 46.20.342, if the vehicle is a commercial vehicle or farm transport vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection or RCW 46.55.120(1)(a)(ii).

(4) Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator.

(5) For purposes of this section "farm transport vehicle" means a motor vehicle owned by a farmer and that is being actively used in the transportation of the farmer's or another farmer's farm, orchard, aquatic farm, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, aquatic farm, or dairy, and that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more. [2011 c 167 § 6; (2011 c 167 § 5 expired July 1, 2011); 2010 c 161 § 1120. Prior: 2007 c 242 § 1; 2007 c 86 § 1; 2005 c 390 § 5; prior: 2003 c 178 § 1; 2003 c 177 § 1; 1998 c 203 § 4; 1997 c 66 § 7; 1996 c 89 § 1; 1994 c 275 § 32; 1987 c 311 § 10. Formerly RCW 46.61.565.]

Effective date—2011 c 167 § 6: "Section 6 of this act takes effect July 1, 2011." [2011 c 167 § 8.]

Effective date—2011 c 167 § 5: "Section 5 of this act expires July 1, 2011." [2011 c 167 § 9.]

Short title—2011 c 167: See note following RCW 46.55.350.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Finding—1998 c 203: See note following RCW 46.55.105.

Intent—1984 c 154: "The legislature intends to extend special parking privileges to persons with disabilities that substantially impair mobility." [1984 c 154 § 1.]

Additional notes found at www.leg.wa.gov

46.55.130 Notice requirements—Public auction—Accumulation of storage charges. (1) If, after the expiration of fifteen days from the date of mailing of notice of custody and sale required in RCW 46.55.110(3) to the registered and legal owners, the vehicle remains unclaimed and has not been listed as a stolen vehicle, or a suspended license impound has been directed, but no security paid under RCW 46.55.120, then the registered tow truck operator having custody of the vehicle shall conduct a sale of the vehicle at public auction after having first published a notice of the date, place, and time of the auction, and a method to contact the tow truck operator conducting the auction such as a telephone number, electronic mail address, or web site, in a newspaper of general circulation in the county in which the vehicle is located not less than three days and no more than ten days before the date of the auction. For the purposes of this section, a newspaper of general circulation may be a commercial, widely circulated, free, classified advertisement circular not affiliated with the registered tow truck operator and the notice may be listed in a classification delineating "auctions" or similar language designed to attract potential bidders to the auction. The notice shall contain a notification that a public viewing period will be available before the auction and the length of the viewing period. The auction shall be held during daylight hours of a normal business day. The viewing period must be one hour if twenty-five or fewer vehicles are to be auctioned, two hours if more than twenty-five and fewer than fifty vehicles are to be auctioned, and three hours if fifty or more vehicles are to be auctioned.

(2) The following procedures are required in any public auction of such abandoned vehicles:

(a) The auction shall be held in such a manner that all persons present are given an equal time and opportunity to bid;

(b) All bidders must be present at the time of auction unless they have submitted to the registered tow truck operator, who may or may not choose to use the preauction bid method, a written bid on a specific vehicle. Written bids may be submitted up to five days before the auction and shall clearly state which vehicle is being bid upon, the amount of the bid, and who is submitting the bid;

(c) The open bid process, including all written bids, shall be used so that everyone knows the dollar value that must be exceeded;

(d) The highest two bids received shall be recorded in written form and shall include the name, address, and telephone number of each such bidder;

(e) In case the high bidder defaults, the next bidder has the right to purchase the vehicle for the amount of his or her bid;

(f) The successful bidder shall apply for title within fifteen days;

(g) The registered tow truck operator shall post a copy of the auction procedure at the bidding site. If the bidding site is different from the licensed office location, the operator shall post a clearly visible sign at the office location that describes

in detail where the auction will be held. At the bidding site a copy of the newspaper advertisement that lists the vehicles for sale shall be posted;

(h) All surplus moneys derived from the auction after satisfaction of the registered tow truck operator's lien shall be remitted within thirty days to the department for deposit in the state motor vehicle fund. A report identifying the vehicles resulting in any surplus shall accompany the remitted funds. If the director subsequently receives a valid claim from the registered vehicle owner of record as determined by the department within one year from the date of the auction, the surplus moneys shall be remitted to such owner;

(i) If an operator receives no bid, or if the operator is the successful bidder at auction, the operator shall, within forty-five days, sell the vehicle to a licensed vehicle wrecker, hulk hauler, or scrap processor by use of the abandoned vehicle report-affidavit of sale, or the operator shall apply for title to the vehicle.

(3) A tow truck operator may refuse to accept a bid at an abandoned vehicle auction under this section for any reason in the operator's posted operating procedures and for any of the following reasons: (a) The bidder is currently indebted to the operator; (b) the operator has knowledge that the bidder has previously abandoned vehicles purchased at auction; or (c) the bidder has purchased, at auction, more than four vehicles in the last calendar year without obtaining title to any or all of the vehicles. In no case may an operator hold a vehicle for longer than ninety days without holding an auction on the vehicle, except for vehicles that are under a police or judicial hold.

(4)(a) The accumulation of storage charges applied to the lien at auction under RCW 46.55.140 may not exceed fifteen additional days from the date of receipt of the information by the operator from the department as provided by RCW 46.55.110(3) plus the storage charges accumulated prior to the receipt of the information. However, vehicles redeemed pursuant to RCW 46.55.120 prior to their sale at auction are subject to payment of all accumulated storage charges from the time of impoundment up to the time of redemption.

(b) The failure of the registered tow truck operator to comply with the time limits provided in this chapter limits the accumulation of storage charges to five days except where delay is unavoidable. Providing incorrect or incomplete identifying information to the department in the abandoned vehicle report shall be considered a failure to comply with these time limits if correct information is available. However, storage charges begin to accrue again on the date the correct and complete information is provided to the department by the registered tow truck operator. [2011 c 65 § 1; 2006 c 28 § 1; 2002 c 279 § 12; 2000 c 193 § 2; 1998 c 203 § 6; 1989 c 111 § 12; 1987 c 311 § 13; 1985 c 377 § 13.]

Finding—1998 c 203: See note following RCW 46.55.105.

IMPOUNDMENT AFTER ARREST FOR DRIVING UNDER THE INFLUENCE

46.55.350 Findings—Intent. (1) The legislature finds that:

(a) Despite every effort, the problem of driving or controlling a vehicle while under the influence of alcohol or drugs remains a great threat to the lives and safety of citizens.

Over five hundred people are killed by traffic accidents in Washington each year and impaired vehicle drivers account for almost forty-five percent, or over two hundred deaths per year. That is, impairment is the leading cause of traffic deaths in this state;

(b) Over thirty-nine thousand people are arrested each year in Washington for driving or controlling a vehicle while under the influence of alcohol or drugs. Persons arrested for driving or controlling a vehicle while under the influence of alcohol or drugs may still be impaired after they are cited and released and could return to drive or control a vehicle. If the vehicle was impounded, there is nothing to stop the impaired person from going to the tow truck operator's storage facility and redeeming the vehicle while still impaired;

(c) More can be done to deter those arrested for driving or controlling a vehicle while under the influence of alcohol or drugs. Approximately one-third of those arrested for operating a vehicle under the influence are repeat offenders. Vehicle impoundment effectively increases deterrence and prevents an impaired driver from accessing the vehicle for a specified time. In addition, vehicle impoundment provides an appropriate measure of accountability for registered owners who allow impaired drivers to drive or control their vehicles, but it also allows the registered owners to redeem their vehicles once impounded. Any inconvenience on a registered owner is outweighed by the need to protect the public;

(d) In order to protect public safety and to enforce the state's laws, it is reasonable and necessary to mandatorily impound the vehicle operated by a person who has been arrested for driving or controlling a vehicle while under the influence of alcohol or drugs.

(2) The legislature intends by chapter 167, Laws of 2011:

(a) To change the primary reason for impounding the vehicle operated by a person arrested for driving or controlling a vehicle under the influence of alcohol or drugs. The purpose of impoundment under chapter 167, Laws of 2011 is to protect the public from a person operating a vehicle while still impaired, rather than to prevent a potential traffic obstruction; and

(b) To require that officers have no discretion as to whether or not to order an impound after they have arrested a vehicle driver with reasonable grounds to believe the driver of the vehicle was driving while under the influence of alcohol or drugs, or was in physical control of a vehicle while under the influence of alcohol or drugs. [2011 c 167 § 2.]

Short title—2011 c 167: "This act shall be known and cited as Hailey's Law." [2011 c 167 § 1.]

46.55.360 Impoundment, when required—Law enforcement powers, duties, and liability immunity—Redemption, when, by whom—Operator liability immunity—Definition. (1)(a) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504, the vehicle is subject to summary impoundment and except for a commercial vehicle or farm transport vehicle under subsection (3)(c) of this section, the vehicle must be impounded. With the exception of the twelve-hour hold mandated under this section, the procedures for notice, redemption, storage, auction, and sale shall remain the same as for other impounded vehicles under this chapter.

(b) If the police officer directing that a vehicle be impounded under this section has:

(i) Waited thirty minutes after the police officer contacted the police dispatcher requesting a registered tow truck operator and the tow truck responding has not arrived, or

(ii) If the police officer is presented with exigent circumstances such as being called to another incident or due to limited available resources being required to return to patrol, the police officer may place the completed impound order and inventory inside the vehicle and secure the vehicle by closing the windows and locking the doors before leaving.

(c) If a police officer directing that a vehicle be impounded under this section has secured the vehicle and left it pursuant to (b) of this subsection, the police officer and the government or agency employing the police officer shall not be liable for any damages to or theft of the vehicle or its contents that occur between the time the officer leaves and the time that the registered tow truck operator takes custody of the vehicle, or for the actions of any person who takes or removes the vehicle before the registered tow truck operator arrives.

(2)(a) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is a registered owner of the vehicle, the impounded vehicle may not be redeemed within a twelve-hour period following the time the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log, unless there are two or more registered owners of the vehicle or there is a legal owner of the vehicle that is not the driver of the vehicle. A registered owner who is not the driver of the vehicle or a legal owner who is not the driver of the vehicle may redeem the impounded vehicle after it arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(b) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is a registered owner of the vehicle, the police officer directing the impound shall notify the driver that the impounded vehicle may not be redeemed within a twelve-hour period following the time the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log, unless there are two or more registered owners or there is a legal owner who is not the driver of the vehicle. The police officer directing the impound shall notify the driver that the impounded vehicle may be redeemed by either a registered owner or legal owner, who is not the driver of the vehicle, after the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(3)(a) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is not a registered owner of the vehicle, the impounded vehicle may be redeemed by a registered owner or legal owner, who is not the driver of the vehicle, after the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(b) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is not a registered owner of the vehicle, the police officer directing the impound shall notify the driver that the impounded vehicle may be redeemed by a registered owner or legal owner, who

is not the driver of the vehicle, after the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(c) If the vehicle is a commercial vehicle or farm transport vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest.

(d) The registered tow truck operator shall notify the agency that ordered that the vehicle be impounded when the vehicle arrives at the registered tow truck operator's storage facility and has been entered into the master log starting the twelve-hour period.

(4) A registered tow truck operator that releases an impounded vehicle pursuant to the requirements stated in this section is not liable for injuries or damages sustained by the operator of the vehicle or sustained by third parties that may result from the vehicle driver's intoxicated state.

(5) For purposes of this section "farm transport vehicle" means a motor vehicle owned by a farmer and that is being actively used in the transportation of the farmer's or another farmer's farm, orchard, aquatic farm, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, aquatic farm, or dairy, and that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more. [2011 c 167 § 3.]

Short title—2011 c 167: See note following RCW 46.55.350.

46.55.370 Law enforcement liability immunity—Reasonable suspicion. If an impoundment arising from an alleged violation of RCW 46.61.502 or 46.61.504 is determined to be in violation of this chapter, then the police officer directing the impoundment and the government employing the officer are not liable for damages for loss of use of the vehicle if the officer had reasonable suspicion to believe that the driver of the vehicle was driving while under the influence of intoxicating liquor or any drug, or was in physical control of a vehicle while under the influence of intoxicating liquor or any drug. [2011 c 167 § 4.]

Short title—2011 c 167: See note following RCW 46.55.350.

Chapter 46.61 RCW RULES OF THE ROAD

Sections

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46.61.723	Medium-speed electric vehicles.
46.61.725	Neighborhood electric vehicles.

46.61.165 High occupancy vehicle lanes—Definition.

(1) The state department of transportation and the local authorities are authorized to reserve all or any portion of any highway under their respective jurisdictions, including any designated lane or ramp, for the exclusive or preferential use of one or more of the following: (a) Public transportation vehicles; (b) private motor vehicles carrying no fewer than a specified number of passengers; or (c) the following private transportation provider vehicles if the vehicle has the capacity to carry eight or more passengers, regardless of the number of passengers in the vehicle, and if such use does not interfere with the efficiency, reliability, and safety of public transportation operations: (i) Auto transportation company vehicles regulated under chapter 81.68 RCW; (ii) passenger charter carrier vehicles regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department of licensing rules; (iii) private nonprofit transportation provider vehicles regulated under chapter 81.66 RCW; and (iv) private employer transportation service vehicles, when such limitation will increase the efficient utilization of the highway or will aid in the conservation of energy resources.

(2) Any transit-only lanes that allow other vehicles to access abutting businesses that are authorized pursuant to subsection (1) of this section may not be authorized for the use of private transportation provider vehicles as described under subsection (1) of this section.

(3) The state department of transportation and the local authorities authorized to reserve all or any portion of any highway under their respective jurisdictions, for exclusive or preferential use, may prohibit the use of a high occupancy vehicle lane by the following private transportation provider vehicles: (a) Auto transportation company vehicles regulated under chapter 81.68 RCW; (b) passenger charter carrier vehicles regulated under chapter 81.70 RCW, and marked or unmarked limousines and stretch sport utility vehicles as defined under department of licensing rules; (c) private nonprofit transportation provider vehicles regulated under chapter 81.66 RCW; and (d) private employer transportation service vehicles, when the average transit speed in the high occupancy vehicle lane fails to meet department of transportation standards and falls below forty-five miles per hour at least ninety percent of the time during the peak hours, as determined by the department of transportation or the local authority, whichever operates the facility.

(4) Regulations authorizing such exclusive or preferential use of a highway facility may be declared to be effective at all times or at specified times of day or on specified days. Violation of a restriction of highway usage prescribed by the appropriate authority under this section is a traffic infraction.

(5) Local authorities are encouraged to establish a process for private transportation providers, as described under

subsections (1) and (3) of this section, to apply for the use of public transportation facilities reserved for the exclusive or preferential use of public transportation vehicles. The application and review processes should be uniform and should provide for an expeditious response by the local authority. Whenever practicable, local authorities should enter into agreements with such private transportation providers to allow for the reasonable use of these facilities.

(6) For the purposes of this section, "private employer transportation service" means regularly scheduled, fixed-route transportation service that is similarly marked or identified to display the business name or logo on the driver and passenger sides of the vehicle, meets the annual certification requirements of the department of transportation, and is offered by an employer for the benefit of its employees. [2011 c 379 § 1; 1999 c 206 § 1; 1998 c 245 § 90; 1991 sp.s. c 15 § 67; 1984 c 7 § 65; 1974 ex.s. c 133 § 2.]

Conflict with state and federal environmental mitigation requirements—2011 c 379: "If any part of this act is found to be in conflict with mitigation requirements under the state environmental policy act (chapter 43.21C RCW) or the national environmental policy act (42 U.S.C. Secs. 4321 through 4347) or in any other way conflicts with federal requirements that are a condition or part of the allocation of federal funds to the state or local facilities, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or local authorities." [2011 c 379 § 5.]

Limited access facilities: RCW 47.52.025.

Additional notes found at www.leg.wa.gov

46.61.350 Certain vehicles must stop at all railroad grade crossings—Exceptions—Definition. (1)(a) The driver of any of the following vehicles must stop before the stop line, if present, and otherwise within fifty feet but not less than fifteen feet from the nearest rail at a railroad grade crossing unless exempt under subsection (3) of this section:

(i) A school bus or private carrier bus carrying any school child or other passenger;

(ii) A commercial motor vehicle transporting passengers;

(iii) A cargo tank, whether loaded or empty, used for transporting any hazardous material as defined in the hazardous materials regulations of the United States department of transportation in 49 C.F.R. Parts 107 through 180 as it existed on June 10, 2010, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section. For the purposes of this section, a cargo tank is any commercial motor vehicle designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis;

(iv) A cargo tank, whether loaded or empty, transporting a commodity under exemption in accordance with 49 C.F.R. Part 107, Subpart B as it existed on June 10, 2010, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section;

(v) A cargo tank transporting a commodity that at the time of loading has a temperature above its flashpoint as determined by the United States department of transportation in 49 C.F.R. Sec. 173.120 as it existed on June 10, 2010, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section; or

(vi) A commercial motor vehicle that is required to be marked or placarded with any one of the following classifications by the United States department of transportation in 49 C.F.R. Part 172 as it existed on June 10, 2010, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section:

(A) Division 1.1, Division 1.2, Division 1.3, or Division 1.4;

(B) Division 2.1, Division 2.2, Division 2.2 oxygen, Division 2.3 poison gas, or Division 2.3 chlorine;

(C) Division 4.1 or Division 4.3;

(D) Division 5.1 or Division 5.2;

(E) Division 6.1 poison;

(F) Class 3 combustible liquid or Class 3 flammable;

(G) Class 7;

(H) Class 8.

(b) While stopped, the driver must listen and look in both directions along the track for any approaching train and for signals indicating the approach of a train. The driver may not proceed until he or she can do so safely.

(2) After stopping at a railroad grade crossing and upon proceeding when it is safe to do so, the driver must cross only in a gear that permits the vehicle to traverse the crossing without changing gears. The driver may not shift gears while crossing the track or tracks.

(3) This section does not apply at any railroad grade crossing where:

(a) Traffic is controlled by a police officer or flagger.

(b) A functioning traffic control signal is transmitting a green light.

(c) The tracks are used exclusively for a streetcar or industrial switching purposes.

(d) The utilities and transportation commission has approved the installation of an "exempt" sign in accordance with the procedures and standards under RCW 81.53.060.

(e) The crossing is abandoned and is marked with a sign indicating it is out-of-service.

(f) The state patrol has, by rule, identified a crossing where stopping is not required.

(g) The superintendent of public instruction has, by rule, identified a circumstance under which a school bus or private carrier bus carrying any school child or other passenger is not required to stop.

(4) For the purpose of this section, "commercial motor vehicle" means: Any vehicle with a manufacturer's seating capacity for eight or more passengers, including the driver, that transports passengers for hire; any private carrier bus; any vehicle used to transport property that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight of 4,536 kg (10,001 pounds) or more; and any vehicle used in the transportation of hazardous materials as defined in RCW 46.25.010. [2011 c 151 § 6. Prior: 2010 c 15 § 1; 2010 c 8 § 9069; 1977 c 78 § 1; 1975 c 62 § 31; 1970 ex.s. c 100 § 7; 1965 ex.s. c 155 § 48.]

Additional notes found at www.leg.wa.gov

46.61.370 Overtaking or meeting school bus, exceptions—Duties of bus driver—Penalty—Safety cameras.

(1) The driver of a vehicle upon overtaking or meeting from

either direction any school bus which has stopped on the roadway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said school bus a visual signal as specified in RCW 46.37.190 and said driver shall not proceed until such school bus resumes motion or the visual signals are no longer activated.

(2) The driver of a vehicle upon a highway divided into separate roadways as provided in RCW 46.61.150 need not stop upon meeting a school bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging school children.

(3) The driver of a vehicle upon a highway with three or more marked traffic lanes need not stop upon meeting a school bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging school children.

(4) The driver of a school bus shall actuate the visual signals required by RCW 46.37.190 only when such bus is stopped on the roadway for the purpose of receiving or discharging school children.

(5) The driver of a school bus may stop completely off the roadway for the purpose of receiving or discharging school children only when the school children do not have to cross the roadway. The school bus driver shall actuate the hazard warning lamps as defined in RCW 46.37.215 before loading or unloading school children at such stops.

(6) Except as provided in subsection (7) of this section, a person found to have committed an infraction of subsection (1) of this section shall be assessed a monetary penalty equal to twice the total penalty assessed under RCW 46.63.110. This penalty may not be waived, reduced, or suspended. Fifty percent of the money so collected shall be deposited into the school zone safety account in the custody of the state treasurer and disbursed in accordance with RCW 46.61.440(5).

(7) An infraction of subsection (1) of this section detected through the use of an automated school bus safety camera under RCW 46.63.180 is not a part of the registered owner's driving record under RCW 46.52.101 and 46.52.120, and must be processed in the same manner as parking infractions, including for the purposes of RCW 3.50.100, 35.20.220, 46.16A.120, and 46.20.270(3). However, the amount of the fine issued for a violation of this section detected through the use of an automated school bus safety camera shall not exceed twice the monetary penalty for a violation of this section as provided under RCW 46.63.110. [2011 c 375 § 3; 1997 c 80 § 1; 1990 c 241 § 8; 1965 ex.s. c 155 § 52.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Intent—2011 c 375: See note following RCW 46.63.180.

Bus routes: RCW 28A.160.115.

46.61.500 Reckless driving—Penalty. (1) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. Violation of the provisions of this section is a gross misdemeanor punishable by imprisonment for up to three hundred sixty-four days and by a fine of not more than five thousand dollars.

(2) The license or permit to drive or any nonresident privilege of any person convicted of reckless driving shall be suspended by the department for not less than thirty days.

(3)(a) Except as provided under (b) of this subsection, a person convicted of reckless driving who has one or more prior offenses as defined in RCW 46.61.5055(14) within seven years shall be required, under RCW 46.20.720, to install an ignition interlock device on all vehicles operated by the person if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance.

(b) A person convicted of reckless driving shall be required, under RCW 46.20.720, to install an ignition interlock device on all vehicles operated by the person if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug or RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug. [2011 c 293 § 4; 2011 c 96 § 34; 1990 c 291 § 1; 1979 ex.s. c 136 § 85; 1967 c 32 § 67; 1965 ex.s. c 155 § 59.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Reviser's note: This section was amended by 2011 c 96 § 34 and by 2011 c 293 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Arrest of person involved in reckless driving: RCW 10.31.100.

Criminal history and driving record: RCW 46.61.513.

Embracing another while driving as reckless driving: RCW 46.61.665.

Excess speed as prima facie evidence of reckless driving: RCW 46.61.465.

Racing of vehicles on public highways, reckless driving: RCW 46.61.530.

Revocation of license, reckless driving: RCW 46.20.285.

Additional notes found at www.leg.wa.gov

46.61.502 Driving under the influence. (1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state shall not constitute a defense against a charge of violating this section.

(3) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after driving. The court shall

not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(b) or (c) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

(a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a);

(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or RCW 46.61.504(6). [2011 c 293 § 2; 2008 c 282 § 20; 2006 c 73 § 1; 1998 c 213 § 3; 1994 c 275 § 2; 1993 c 328 § 1; 1987 c 373 § 2; 1986 c 153 § 2; 1979 ex.s. c 176 § 1.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Effective date—2006 c 73: "This act takes effect July 1, 2007." [2006 c 73 § 19.]

Legislative finding, purpose—1987 c 373: "The legislature finds the existing statutes that establish the criteria for determining when a person is guilty of driving a motor vehicle under the influence of intoxicating liquor or drugs are constitutional and do not require any additional criteria to ensure their legality. The purpose of this act is to provide an additional method of defining the crime of driving while intoxicated. This act is not an acknowledgement that the existing breath alcohol standard is legally improper or invalid." [1987 c 373 § 1.]

Business operation of vessel or vehicle while intoxicated: RCW 9.91.020.

Criminal history and driving record: RCW 46.61.513.

Operating aircraft recklessly or under influence of intoxicants or drugs: RCW 47.68.220.

Use of vessel in reckless manner or while under influence of alcohol or drugs prohibited: RCW 79A.60.040.

Additional notes found at www.leg.wa.gov

46.61.504 Physical control of vehicle under the influence. (1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state:

(a) And the person has, within two hours after being in actual physical control of the vehicle, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(3) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after being in such control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in such control, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(b) or (c) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

(a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a);

(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or RCW 46.61.502(6). [2011 c 293 § 3; 2008 c 282 § 21; 2006 c 73 § 2; 1998 c 213 § 5; 1994 c 275 § 3; 1993 c 328 § 2; 1987 c 373 § 3; 1986 c 153 § 3; 1979 ex.s. c 176 § 2.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Effective date—2006 c 73: See note following RCW 46.61.502.

Legislative finding, purpose—Severability—1987 c 373: See notes following RCW 46.61.502.

Criminal history and driving record: RCW 46.61.513.

Additional notes found at www.leg.wa.gov

46.61.5054 Alcohol violators—Additional fee—Distribution. (1)(a) In addition to penalties set forth in *RCW 46.61.5051 through 46.61.5053 until September 1, 1995, and RCW 46.61.5055 thereafter, a two hundred dollar fee shall be assessed to a person who is either convicted, sentenced to a lesser charge, or given deferred prosecution, as a result of an arrest for violating RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for the purpose of funding the Washington state toxicology laboratory and the Washington state patrol for grants and activities to increase the conviction rate and decrease the incidence of persons driving under the influence of alcohol or drugs.

(b) Upon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay.

(c) When a minor has been adjudicated a juvenile offender for an offense which, if committed by an adult, would constitute a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall assess the two hundred dollar fee under (a) of this subsection. Upon a verified petition by a minor assessed the fee, the court may suspend payment of all or part of the fee if it finds that the minor does not have the ability to pay the fee.

(2) The fee assessed under subsection (1) of this section shall be collected by the clerk of the court and, subject to subsection (4) of this section, one hundred seventy-five dollars of the fee must be distributed as follows:

(a) Forty percent shall be subject to distribution under RCW **3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

(b) The remainder of the fee shall be forwarded to the state treasurer who shall, through June 30, 1997, deposit: Fifty percent in the death investigations' account to be used solely for funding the state toxicology laboratory blood or breath testing programs; and fifty percent in the state patrol highway account to be used solely for funding activities to increase the conviction rate and decrease the incidence of persons driving under the influence of alcohol or drugs. Effective July 1, 1997, the remainder of the fee shall be forwarded to the state treasurer who shall deposit: Fifteen percent in the death investigations' account to be used solely for funding the state toxicology laboratory blood or breath testing programs; and eighty-five percent in the state patrol highway account to be used solely for funding activities to increase the conviction rate and decrease the incidence of persons driving under the influence of alcohol or drugs.

(3) Twenty-five dollars of the fee assessed under subsection (1) of this section must be distributed to the highway safety account to be used solely for funding Washington traffic safety commission grants to reduce statewide collisions caused by persons driving under the influence of alcohol or drugs. Grants awarded under this subsection may be for projects that encourage collaboration with other community, governmental, and private organizations, and that utilize innovative approaches based on best practices or proven strategies supported by research or rigorous evaluation. Grants recipients may include, for example:

(a) DUI courts; and

(b) Jurisdictions implementing the victim impact panel registries under RCW 46.61.5152 and 10.01.230.

(4) If the court has suspended payment of part of the fee pursuant to subsection (1)(b) or (c) of this section, amounts collected shall be distributed proportionately.

(5) This section applies to any offense committed on or after July 1, 1993. [2011 c 293 § 12. Prior: 1995 c 398 § 15; 1995 c 332 § 13; 1994 c 275 § 7.]

Reviser's note: *(1) RCW 46.61.5051, 46.61.5052, and 46.61.5053 were repealed by 1995 c 332 § 21, effective September 1, 1995.

***(2) RCW 3.46.120 was repealed by 2008 c 227 § 12, effective July 1, 2008.

Additional notes found at www.leg.wa.gov

46.61.5055 Alcohol violators—Penalty schedule. (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than three hundred sixty-four days. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than three hundred sixty-four days. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of

imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than three hundred sixty-four days and sixty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than three hundred sixty-four days and ninety days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended or

deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or three prior offenses within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than three hundred sixty-four days and one hundred twenty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than three hundred sixty-four days and one hundred fifty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this

mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(4) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished under chapter 9.94A RCW if:

(a) The person has four or more prior offenses within ten years; or

(b) The person has ever previously been convicted of:

(i) A violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(ii) A violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

(5)(a) The court shall require any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply for an ignition interlock driver's license from the department and to have a functioning ignition interlock device installed on all motor vehicles operated by the person.

(b) The installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours.

(c) An ignition interlock device imposed under this section shall be calibrated to prevent a motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more.

(d) The court may waive the requirement that a person apply for an ignition interlock driver's license if the court makes a specific finding in writing that:

(i) The person lives out-of-state and the devices are not reasonably available in the person's local area;

(ii) The person does not operate a vehicle; or

(iii) The person is not eligible to receive an ignition interlock driver's license under RCW 46.20.385 because the person is not a resident of Washington, is a habitual traffic offender, has already applied for or is already in possession of an ignition interlock driver's license, has never had a driver's license, has been certified under chapter 74.20A RCW as noncompliant with a child support order, or is subject to any other condition or circumstance that makes the person ineligible to obtain an ignition interlock driver's license.

(e) If a court finds that a person is not eligible to receive an ignition interlock driver's license under this section, the

court is not required to make any further subsequent inquiry or determination as to the person's eligibility.

(f) If the court orders that a person refrain from consuming any alcohol and requires the person to apply for an ignition interlock driver's license, and the person states that he or she does not operate a motor vehicle or the person is ineligible to obtain an ignition interlock driver's license, the court shall order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system. Alcohol monitoring ordered under this subsection must be for the period of the mandatory license suspension or revocation. The person shall pay for the cost of the monitoring. The county or municipality where the penalty is being imposed shall determine the cost.

(g) The period of time for which ignition interlock use is required will be as follows:

(i) For a person who has not previously been restricted under this section, a period of one year;

(ii) For a person who has previously been restricted under (g)(i) of this subsection, a period of five years;

(iii) For a person who has previously been restricted under (g)(ii) of this subsection, a period of ten years.

(h) Beginning with incidents occurring on or after September 1, 2011, when calculating the period of time for the restriction under RCW 46.20.720(3), the department must also give the person a day-for-day credit for the time period, beginning from the date of the incident, during which the person kept an ignition interlock device installed on all vehicles the person operates. For the purposes of this subsection (5)(h), the term "all vehicles" does not include vehicles that would be subject to the employer exception under RCW 46.20.720(3).

(6) If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) In any case in which the installation and use of an interlock or other device is not mandatory under RCW 46.20.720 or other law, order the use of such a device for not less than sixty days following the restoration of the person's license, permit, or nonresident driving privileges; and

(b) In any case in which the installation and use of such a device is otherwise mandatory, order the use of such a device for an additional sixty days.

(7) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property; and

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers.

(8) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(9) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) If the person's alcohol concentration was at least 0.15:

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years; or

(c) If by reason of the person's refusal to take a test offered under RCW 46.20.308, there is no test result indicating the person's alcohol concentration:

(i) Where there have been no prior offenses within seven years, be revoked or denied by the department for two years;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for three years; or

(iii) Where there have been two or more previous offenses within seven years, be revoked or denied by the department for four years.

The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed under RCW 46.20.3101 arising out of the same incident.

For purposes of this subsection (9), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(10) After expiration of any period of suspension, revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(11)(a) In addition to any nonsuspendable and nondeferable jail sentence required by this section, whenever the court imposes up to three hundred sixty-four days in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in

actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i), (ii), or (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(12) A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-four days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-four days.

(13) An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(3).

(14) For purposes of this section and RCW 46.61.502 and 46.61.504:

(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or

any drug, or a conviction for a violation of RCW 46.61.520 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug:

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.522 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(vi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;

(vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance; or

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in this subsection (14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing;

(b) "Within seven years" means that the arrest for a prior offense occurred within seven years before or after the arrest for the current offense; and

(c) "Within ten years" means that the arrest for a prior offense occurred within ten years before or after the arrest for the current offense. [2011 c 293 § 7; 2011 c 96 § 35; 2010 c 269 § 4; 2008 c 282 § 14; 2007 c 474 § 1; 2006 c 73 § 3; 2004 c 95 § 13; 2003 c 103 § 1. Prior: 1999 c 324 § 5; 1999 c 274 § 6; 1999 c 5 § 1; prior: 1998 c 215 § 1; 1998 c 214 § 1; 1998 c 211 § 1; 1998 c 210 § 4; 1998 c 207 § 1; 1998 c 206 § 1; prior: 1997 c 229 § 11; 1997 c 66 § 14; 1996 c 307 § 3; 1995 1st sp.s. c 17 § 2; 1995 c 332 § 5.]

Reviser's note: This section was amended by 2011 c 96 § 35 and by 2011 c 293 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Effective date—2010 c 269: See note following RCW 46.20.385.

Effective date—2008 c 282: See note following RCW 46.20.308.

Effective date—2007 c 474: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 474 § 2.]

Effective date—2006 c 73: See note following RCW 46.61.502.

Short title—Finding—Intent—Effective date—1998 c 210: See notes following RCW 46.20.720.

Additional notes found at www.leg.wa.gov

46.61.5056 Alcohol violators—Information school—Evaluation and treatment. (1) A person subject to alcohol assessment and treatment under RCW 46.61.5055 shall be required by the court to complete a course in an alcohol information school approved by the department of social and health services or to complete more intensive treatment in a program approved by the department of social and health services, as determined by the court. The court shall notify the department of licensing whenever it orders a person to complete a course or treatment program under this section.

(2) A diagnostic evaluation and treatment recommendation shall be prepared under the direction of the court by an alcoholism agency approved by the department of social and health services or a qualified probation department approved by the department of social and health services. A copy of the report shall be forwarded to the court and the department of licensing. Based on the diagnostic evaluation, the court shall determine whether the person shall be required to complete a course in an alcohol information school approved by the department of social and health services or more intensive treatment in a program approved by the department of social and health services.

(3) Standards for approval for alcohol treatment programs shall be prescribed by the department of social and health services. The department of social and health services shall periodically review the costs of alcohol information schools and treatment programs.

(4) Any agency that provides treatment ordered under RCW 46.61.5055, shall immediately report to the appropriate probation department where applicable, otherwise to the court, and to the department of licensing any noncompliance by a person with the conditions of his or her ordered treatment. The court shall notify the department of licensing and the department of social and health services of any failure by an agency to so report noncompliance. Any agency with knowledge of noncompliance that fails to so report shall be fined two hundred fifty dollars by the department of social and health services. Upon three such failures by an agency within one year, the department of social and health services shall revoke the agency's approval under this section.

(5) The department of licensing and the department of social and health services may adopt such rules as are necessary to carry out this section. [2011 c 293 § 13; 1995 c 332 § 14; 1994 c 275 § 9.]

Additional notes found at www.leg.wa.gov

46.61.5152 Attendance at program focusing on victims. In addition to penalties that may be imposed under RCW 46.61.5055, the court may require a person who is convicted of a nonfelony violation of RCW 46.61.502 or 46.61.504 or who enters a deferred prosecution program under RCW 10.05.020 based on a nonfelony violation of RCW 46.61.502 or 46.61.504, to attend an educational program, such as a victim impact panel, focusing on the emotional, physical, and financial suffering of victims who were injured by persons convicted of driving while under the influ-

ence of intoxicants. The victim impact panel program must meet the minimum standards established under RCW 10.01.230. [2011 c 293 § 14; 2006 c 73 § 17; 1998 c 41 § 9; 1994 c 275 § 40; 1992 c 64 § 1.]

Effective date—2006 c 73: See note following RCW 46.61.502.

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

Additional notes found at www.leg.wa.gov

46.61.5249 Negligent driving—First degree. (1)(a) A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor or an illegal drug.

(b) It is an affirmative defense to negligent driving in the first degree by means of exhibiting the effects of having consumed an illegal drug that must be proved by the defendant by a preponderance of the evidence, that the driver has a valid prescription for the drug consumed, and has been consuming it according to the prescription directions and warnings.

(c) Negligent driving in the first degree is a misdemeanor.

(2) For the purposes of this section:

(a) "Negligent" means the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances.

(b) "Exhibiting the effects of having consumed liquor" means that a person has the odor of liquor on his or her breath, or that by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed liquor, and either:

(i) Is in possession of or in close proximity to a container that has or recently had liquor in it; or

(ii) Is shown by other evidence to have recently consumed liquor.

(c) "Exhibiting the effects of having consumed an illegal drug" means that a person by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed an illegal drug and either:

(i) Is in possession of an illegal drug; or

(ii) Is shown by other evidence to have recently consumed an illegal drug.

(d) "Illegal drug" means a controlled substance under chapter 69.50 RCW for which the driver does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings, or a legend drug under chapter 69.41 RCW for which the driver does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings.

(3) Any act prohibited by this section that also constitutes a crime under any other law of this state may be the basis of prosecution under such other law notwithstanding that it may also be the basis for prosecution under this section.

(4) A person convicted of negligent driving in the first degree who has one or more prior offenses as defined in RCW 46.61.5055(14) within seven years shall be required, under RCW 46.20.720, to install an ignition interlock device

on all vehicles operated by the person. [2011 c 293 § 5; 1997 c 66 § 4.]

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Criminal history and driving record: RCW 46.61.513.

46.61.526 Negligent driving—Second degree—Vulnerable user victim—Penalties—Definitions. (*Effective July 1, 2012.*) (1) A person commits negligent driving in the second degree with a vulnerable user victim if, under circumstances not constituting negligent driving in the first degree, he or she operates a vehicle, as defined in RCW 46.04.670, in a manner that is both negligent and endangers or is likely to endanger any person or property, and he or she proximately causes the death, great bodily harm, or substantial bodily harm of a vulnerable user of a public way.

(2) The law enforcement officer or prosecuting authority issuing the notice of infraction for an offense under this section shall state on the notice of infraction that the offense was a proximate cause of death, great bodily harm, or substantial bodily harm, as defined in RCW 9A.04.110, of a vulnerable user of a public way.

(3) Persons under the age of sixteen who commit an infraction under this section are subject to the provisions of RCW 13.40.250.

(4) A person found to have committed negligent driving in the second degree with a vulnerable user victim shall be required to:

(a) Pay a monetary penalty of five thousand dollars, which may not be reduced to an amount less than one thousand dollars; and

(b) Have his or her driving privileges suspended for ninety days.

(5) In lieu of the penalties imposed under subsection (4) of this section, a person found to have committed negligent driving in the second degree with a vulnerable user victim who requests and personally appears for a hearing pursuant to RCW 46.63.070 (1) or (2) may elect to:

(a) Pay a penalty of two hundred fifty dollars;

(b) Attend traffic school for a number of days to be determined by the court pursuant to chapter 46.83 RCW;

(c) Perform community service for a number of hours to be determined by the court, which may not exceed one hundred hours, and which must include activities related to driver improvement and providing public education on traffic safety; and

(d) Submit certification to the court establishing that the requirements of this subsection have been met within one year of the hearing.

(6) If a person found to have committed a violation of this section elects the penalties imposed under subsection (5) of this section, the court may impose the penalties under subsection (5) of this section and the court may assess costs as the court deems appropriate for administrative processing.

(7) Except as provided in (b) of this subsection, if a person found to have committed a violation of this section elects the penalties under subsection (5) of this section but does not complete all requirements of subsection (5) of this section within one year of the hearing:

(a)(i) The court shall impose a monetary penalty in the amount of five thousand dollars, which may not be reduced to an amount less than one thousand dollars; and

(ii) The person's driving privileges shall be suspended for ninety days.

(b) For good cause shown, the court may extend the period of time in which the person must complete the requirements of subsection (5) of this section before any of the penalties provided in this subsection are imposed.

(8) An offense under this section is a traffic infraction. To the extent not inconsistent with this section, the provisions of chapter 46.63 RCW shall apply to infractions under this section. Procedures for the conduct of all hearings provided for in this section may be established by rule of the supreme court.

(9) If a person is penalized under subsection (4) of this section, then the court shall notify the department, and the department shall suspend the person's driving privileges. If a person fails to meet the requirements of subsection (5) of this section, the court shall notify the department that the person has failed to meet the requirements of subsection (5) of this section and the department shall suspend the person's driving privileges. Notice provided by the court under this subsection must be in a form specified by the department.

(10) Any act prohibited by this section that also constitutes a crime under any other law of this state may be the basis of prosecution under such other law notwithstanding that it may also be the basis for prosecution under this section.

(11) For the purposes of this section:

(a) "Great bodily harm" and "substantial bodily harm" have the same meaning as provided in RCW 9A.04.110.

(b) "Negligent" has the same meaning as provided in RCW 46.61.525(2).

(c) "Vulnerable user of a public way" means:

(i) A pedestrian;

(ii) A person riding an animal; or

(iii) A person operating any of the following on a public way:

(A) A farm tractor or implement of husbandry, without an enclosed shell;

(B) A bicycle;

(C) An electric-assisted bicycle;

(D) An electric personal assistive mobility device;

(E) A moped;

(F) A motor-driven cycle;

(G) A motorized foot scooter; or

(H) A motorcycle. [2011 c 372 § 1.]

Application—2011 c 372: "This act applies to infractions committed on or after July 1, 2012." [2011 c 372 § 4.]

Effective date—2011 c 372: "This act takes effect July 1, 2012." [2011 c 372 § 5.]

46.61.582 Free parking for persons with disabilities. Any person who meets the criteria for special parking privileges under RCW 46.19.010 shall be allowed free of charge to park a vehicle being used to transport that person for unlimited periods of time in parking zones or areas including zones or areas with parking meters which are otherwise restricted as to the length of time parking is permitted. This section does not apply to those zones or areas in which the

stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. The person shall obtain and display a special placard or license plate under RCW 46.19.010 and 46.19.030 to be eligible for the privileges under this section. [2011 c 171 § 80; 2010 c 161 § 1124; 1991 c 339 § 25; 1984 c 154 § 5.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Intent—Application—Severability—1984 c 154: See notes following RCW 46.55.113.

46.61.613 Motorcycles—Temporary suspension of restrictions for parades or public demonstrations. The provisions of RCW 46.37.530 and 46.61.610 through 46.61.612 are temporarily suspended with respect to the operation of motorcycles on a closed road during a parade or public demonstration that has been permitted by a local jurisdiction. [2011 c 332 § 1; 2010 c 8 § 9073; 1967 c 232 § 8.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.705 Off-road motorcycles. (Effective January 1, 2012.) (1) A person may operate an off-road motorcycle upon a public road, street, or highway of this state if the person:

(a) Files a motorcycle highway use declaration, as provided under RCW 46.16A.435, with the department certifying conformance with all applicable federal motor vehicle safety standards and state standards;

(b) Obtains and has in full force and effect a current and proper ORV registration or temporary ORV use permit under chapter 46.09 RCW; and

(c) Obtains a valid driver's license and motorcycle endorsement issued to Washington residents in compliance with chapter 46.20 RCW for a motorcycle.

(2) Any off-road motorcycle operated under this section must have:

(a) A head lamp meeting the requirements of RCW 46.37.523 and 46.37.524, and used in accordance with RCW 46.37.522;

(b) A tail lamp meeting the requirements of RCW 46.37.525;

(c) A stop lamp meeting the requirements of RCW 46.37.525;

(d) Reflectors meeting the requirements of RCW 46.37.525;

(e) Brakes meeting the requirements of RCW 46.37.527, 46.37.528, and 46.37.529;

(f) A mirror on both the left and right handlebar meeting the requirements of RCW 46.37.530;

(g) A windshield meeting the requirements of RCW 46.37.530, unless the driver wears glasses, goggles, or a face shield while operating the motorcycle, of a type conforming to rules adopted by the state patrol;

(h) A horn or warning device meeting the requirements of RCW 46.37.380;

(i) Tires meeting the requirements of RCW 46.37.420 and 46.37.425;

(j) Turn signals meeting the requirements of RCW 46.37.200; and

(k) Fenders adequate for minimizing the spray or splash of water, rocks, or mud from the roadway. Fenders must be as wide as the tires behind which they are mounted and extend downward at least half way to the center of the axle.

(3) Every person operating an off-road motorcycle under this section is granted all rights and is subject to all duties applicable to the driver of a motorcycle under RCW 46.37.530 and chapter 46.61 RCW.

(4) Any person who violates this section commits a traffic infraction.

(5) Accidents must be recorded and tracked in compliance with chapter 46.52 RCW. An accident report must indicate and be tracked separately when any of the vehicles involved are an off-road motorcycle. [2011 c 121 § 2.]

Effective date—2011 c 121: See note following RCW 46.04.363.

46.61.710 Mopeds, EPAMDs, electric-assisted bicycles, motorized foot scooters—General requirements and operation. (1) No person shall operate a moped upon the highways of this state unless the moped has been assigned a moped registration number and displays a moped permit in accordance with RCW 46.16A.405(2).

(2) Notwithstanding any other provision of law, a moped may not be operated on a bicycle path or trail, bikeway, equestrian trail, or hiking or recreational trail.

(3) Operation of a moped, electric personal assistive mobility device, motorized foot scooter, or an electric-assisted bicycle on a fully controlled limited access highway is unlawful. Operation of a moped, motorized foot scooter, or an electric-assisted bicycle on a sidewalk is unlawful.

(4) Removal of any muffling device or pollution control device from a moped is unlawful.

(5) Subsections (1), (2), and (4) of this section do not apply to electric-assisted bicycles. Electric-assisted bicycles and motorized foot scooters may have access to highways, other than limited access highways, of the state to the same extent as bicycles. Subject to subsection (6) of this section, electric-assisted bicycles and motorized foot scooters may be operated on a multipurpose trail or bicycle lane, but local jurisdictions may restrict or otherwise limit the access of electric-assisted bicycles and motorized foot scooters, and state agencies may regulate the use of motorized foot scooters on facilities and properties under their jurisdiction and control.

(6) Subsections (1) and (4) of this section do not apply to motorized foot scooters. Subsection (2) of this section applies to motorized foot scooters when the bicycle path, trail, bikeway, equestrian trail, or hiking or recreational trail was built or is maintained with federal highway transportation funds. Additionally, any new trail or bicycle path or readily identifiable existing trail or bicycle path not built or maintained with federal highway transportation funds may be used by persons operating motorized foot scooters only when appropriately signed.

(7) A person operating an electric personal assistive mobility device (EPAMD) shall obey all speed limits and shall yield the right-of-way to pedestrians and human-powered

devices at all times. An operator must also give an audible signal before overtaking and passing a pedestrian. Except for the limitations of this subsection, persons operating an EPAMD have all the rights and duties of a pedestrian.

(8) The use of an EPAMD may be regulated in the following circumstances:

(a) A municipality and the department of transportation may prohibit the operation of an EPAMD on public highways within their respective jurisdictions where the speed limit is greater than twenty-five miles per hour;

(b) A municipality may restrict the speed of an EPAMD in locations with congested pedestrian or nonmotorized traffic and where there is significant speed differential between pedestrians or nonmotorized traffic and EPAMD operators. The areas in this subsection must be designated by the city engineer or designee of the municipality. Municipalities shall not restrict the speed of an EPAMD in the entire community or in areas in which there is infrequent pedestrian traffic;

(c) A state agency or local government may regulate the operation of an EPAMD within the boundaries of any area used for recreation, open space, habitat, trails, or conservation purposes. [2011 c 171 § 81; 2009 c 275 § 9; 2003 c 353 § 10; 2002 c 247 § 7; 1997 c 328 § 5; 1979 ex.s. c 213 § 8.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—2003 c 353: See note following RCW 46.04.320.

Legislative review—2002 c 247: See note following RCW 46.04.1695.

46.61.723 Medium-speed electric vehicles. (1) Except as provided in subsection (3) of this section, a person may operate a medium-speed electric vehicle upon a highway of this state having a speed limit of thirty-five miles per hour or less, or forty-five miles per hour or less as provided in subsection (4) of this section, if:

(a) The person does not operate a medium-speed electric vehicle upon state highways that are listed in chapter 47.17 RCW;

(b) The person does not operate a medium-speed electric vehicle upon a highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates in compliance with chapter 46.16A RCW. The department must track medium-speed electric vehicles in a separate registration category for reporting purposes;

(c) The person does not operate a medium-speed electric vehicle upon a highway of this state without first obtaining a valid driver's license issued to Washington residents in compliance with chapter 46.20 RCW;

(d) The person does not operate a medium-speed electric vehicle subject to registration under chapter 46.16A RCW on a highway of this state unless the person is insured under a motor vehicle liability policy in compliance with chapter 46.30 RCW; and

(e) The person operating a medium-speed electric vehicle does not cross a roadway with a speed limit in excess of thirty-five miles per hour, or forty-five miles per hour as provided in subsection (4) of this section, unless the crossing begins and ends on a roadway with a speed limit of thirty-five miles per hour or less, or forty-five miles per hour or less as provided in subsection (4) of this section, and occurs at an

intersection of approximately ninety degrees, except that the operator of a medium-speed electric vehicle must not cross an uncontrolled intersection of streets and highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities under subsection (3) of this section.

(2) Any person who violates this section commits a traffic infraction.

(3) This section does not prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of their police power, from regulating the operation of medium-speed electric vehicles on streets and highways under their jurisdiction by resolution or ordinance of the governing body, if the regulation is consistent with this title, except that:

(a) Local authorities may not authorize the operation of medium-speed electric vehicles on streets and highways that are part of the state highway system subject to Title 47 RCW;

(b) Local authorities may not prohibit the operation of medium-speed electric vehicles upon highways of this state having a speed limit of thirty-five miles per hour or less; and

(c) Local authorities may not establish requirements for the registration and licensing of medium-speed electric vehicles.

(4) In counties consisting of islands whose only connection to the mainland are ferry routes, a person may operate a medium-speed electric vehicle upon a highway of this state having a speed limit of forty-five miles per hour or less. A person operating a medium-speed electric vehicle as authorized under this subsection must not cross a roadway with a speed limit in excess of forty-five miles per hour, unless the crossing begins and ends on a roadway with a speed limit of forty-five miles per hour or less and occurs at an intersection of approximately ninety degrees, except that the operator of a medium-speed electric vehicle must not cross an uncontrolled intersection of streets and highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities under subsection (3) of this section.

(5) Accidents must be recorded and tracked in compliance with chapter 46.52 RCW. An accident report must indicate and be tracked separately when any of the vehicles involved are a medium-speed electric vehicle. [2011 c 171 § 82; 2010 c 144 § 2; 2007 c 510 § 3.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—2007 c 510: See note following RCW 46.04.320.

46.61.725 Neighborhood electric vehicles. (1) Absent prohibition by local authorities authorized under this section and except as prohibited elsewhere in this section, a person may operate a neighborhood electric vehicle upon a highway of this state having a speed limit of thirty-five miles per hour or less, or forty-five miles per hour or less as provided in subsection (4) of this section, if:

(a) The person does not operate a neighborhood electric vehicle upon state highways that are listed in chapter 47.17 RCW;

(b) The person does not operate a neighborhood electric vehicle upon a highway of this state without first having obtained and having in full force and effect a current and

proper vehicle license and display vehicle license number plates in compliance with chapter 46.16A RCW. The department must track neighborhood electric vehicles in a separate registration category for reporting purposes;

(c) The person does not operate a neighborhood electric vehicle upon a highway of this state without first obtaining a valid driver's license issued to Washington residents in compliance with chapter 46.20 RCW;

(d) The person does not operate a neighborhood electric vehicle subject to registration under chapter 46.16A RCW on a highway of this state unless the person is insured under a motor vehicle liability policy in compliance with chapter 46.30 RCW; and

(e) The person operating a neighborhood electric vehicle does not cross a roadway with a speed limit in excess of thirty-five miles per hour, or forty-five miles per hour as provided in subsection (4) of this section, unless the crossing begins and ends on a roadway with a speed limit of thirty-five miles per hour or less, or forty-five miles per hour or less as provided in subsection (4) of this section, and occurs at an intersection of approximately ninety degrees, except that the operator of a neighborhood electric vehicle must not cross an uncontrolled intersection of streets and highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities provided elsewhere in this section.

(2) Any person who violates this section commits a traffic infraction.

(3) This section does not prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of their police power, from regulating the operation of neighborhood electric vehicles on streets and highways under their jurisdiction by resolution or ordinance of the governing body, if the regulation is consistent with the provisions of this title, except that:

(a) Local authorities may not authorize the operation of neighborhood electric vehicles on streets and highways that are part of the state highway system subject to the provisions of Title 47 RCW;

(b) Local authorities may not prohibit the operation of neighborhood electric vehicles upon highways of this state having a speed limit of twenty-five miles per hour or less; and

(c) Local authorities are prohibited from establishing any requirements for the registration and licensing of neighborhood electric vehicles.

(4) In counties consisting of islands whose only connection to the mainland are ferry routes, a person may operate a neighborhood electric vehicle upon a highway of this state having a speed limit of forty-five miles per hour or less. A person operating a neighborhood electric vehicle as authorized under this subsection must not cross a roadway with a speed limit in excess of forty-five miles per hour, unless the crossing begins and ends on a roadway with a speed limit of forty-five miles per hour or less and occurs at an intersection of approximately ninety degrees, except that the operator of a neighborhood electric vehicle must not cross an uncontrolled intersection of streets and highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities under subsection (3) of this section.

(5) Accidents must be recorded and tracked in compliance with chapter 46.52 RCW. An accident report must indicate and be tracked separately when any of the vehicles involved are a neighborhood electric vehicle. [2011 c 171 § 83; 2010 c 144 § 3; 2003 c 353 § 3.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—2003 c 353: See note following RCW 46.04.320.

Chapter 46.63 RCW

DISPOSITION OF TRAFFIC INFRACTIONS

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46.63.030 Notice of traffic infraction—Issuance—Abandoned vehicles. (*Contingent expiration date.*) (1) A law enforcement officer has the authority to issue a notice of traffic infraction:

(a) When the infraction is committed in the officer's presence;

(b) When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed;

(c) If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic infraction;

(d) When the infraction is detected through the use of a photo enforcement system under RCW 46.63.160;

(e) When the infraction is detected through the use of an automated school bus safety camera under RCW 46.63.180; or

(f) When the infraction is detected through the use of an automated traffic safety camera under RCW 46.63.170.

(2) A court may issue a notice of traffic infraction upon receipt of a written statement of the officer that there is reasonable cause to believe that an infraction was committed.

(3) If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic infraction.

(4) In the case of failure to redeem an abandoned vehicle under RCW 46.55.120, upon receiving a complaint by a registered tow truck operator that has incurred costs in remov-

ing, storing, and disposing of an abandoned vehicle, an officer of the law enforcement agency responsible for directing the removal of the vehicle shall send a notice of infraction by certified mail to the last known address of the person responsible under RCW 46.55.105. The notice must be entitled "Littering—Abandoned Vehicle" and give notice of the monetary penalty. The officer shall append to the notice of infraction, on a form prescribed by the department of licensing, a notice indicating the amount of costs incurred as a result of removing, storing, and disposing of the abandoned vehicle, less any amount realized at auction, and a statement that monetary penalties for the infraction will not be considered as having been paid until the monetary penalty payable under this chapter has been paid and the court is satisfied that the person has made restitution in the amount of the deficiency remaining after disposal of the vehicle. [2011 c 375 § 4; 2007 c 101 § 1; 2005 c 167 § 2; 2004 c 231 § 2; 2002 c 279 § 14; 1995 c 219 § 5; 1994 c 176 § 3; 1987 c 66 § 2; 1980 c 128 § 10; 1979 ex.s. c 136 § 3.]

Intent—2011 c 375: See note following RCW 46.63.180.

Additional notes found at www.leg.wa.gov

46.63.030 Notice of traffic infraction—Issuance—Abandoned vehicles. (*Contingent effective date.*) (1) A law enforcement officer has the authority to issue a notice of traffic infraction:

(a) When the infraction is committed in the officer's presence;

(b) When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed;

(c) If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic infraction;

(d) When the infraction is detected through the use of an automated traffic safety camera under RCW 46.63.170; or

(e) When the infraction is detected through the use of an automated school bus safety camera under RCW 46.63.180.

(2) A court may issue a notice of traffic infraction upon receipt of a written statement of the officer that there is reasonable cause to believe that an infraction was committed.

(3) If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic infraction.

(4) In the case of failure to redeem an abandoned vehicle under RCW 46.55.120, upon receiving a complaint by a registered tow truck operator that has incurred costs in removing, storing, and disposing of an abandoned vehicle, an officer of the law enforcement agency responsible for directing the removal of the vehicle shall send a notice of infraction by certified mail to the last known address of the person responsible under RCW 46.55.105. The notice must be entitled "Littering—Abandoned Vehicle" and give notice of the monetary penalty. The officer shall append to the notice of

infraction, on a form prescribed by the department of licensing, a notice indicating the amount of costs incurred as a result of removing, storing, and disposing of the abandoned vehicle, less any amount realized at auction, and a statement that monetary penalties for the infraction will not be considered as having been paid until the monetary penalty payable under this chapter has been paid and the court is satisfied that the person has made restitution in the amount of the deficiency remaining after disposal of the vehicle. [2011 c 375 § 5; 2010 c 249 § 5; 2007 c 101 § 1; 2005 c 167 § 2; 2004 c 231 § 2; 2002 c 279 § 14; 1995 c 219 § 5; 1994 c 176 § 3; 1987 c 66 § 2; 1980 c 128 § 10; 1979 ex.s. c 136 § 3.]

Contingent effective date—2011 c 375 §§ 5, 7, and 9: "Sections 5, 7, and 9 of this act take effect upon certification by the secretary of transportation that the new statewide tolling operations center and photo toll system are fully operational. A notice of certification must be filed with the code reviser for publication in the state register. If a certificate is not issued by the secretary of transportation by December 1, 2012, sections 5, 7, and 9 of this act are null and void." [2011 c 375 § 10.]

Intent—2011 c 375: See note following RCW 46.63.180.

Contingent effective date—2010 c 249: See note following RCW 47.56.795.

Additional notes found at www.leg.wa.gov

46.63.060 Notice of traffic infraction—Determination final unless contested—Form. (1) A notice of traffic infraction represents a determination that an infraction has been committed. The determination will be final unless contested as provided in this chapter.

(2) The form for the notice of traffic infraction shall be prescribed by rule of the supreme court and shall include the following:

(a) A statement that the notice represents a determination that a traffic infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that a traffic infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction; that the penalty for a traffic infraction may include sanctions against the person's driver's license including suspension, revocation, or denial; that the penalty for a traffic infraction related to standing, stopping, or parking may include nonrenewal of the vehicle license;

(c) A statement of the specific traffic infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the traffic infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses including the officer who issued the notice of infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person will be deemed to have committed the infraction and may not subpoena witnesses;

(h) A statement that the person must respond to the notice as provided in this chapter within fifteen days or the

person's driver's license or driving privilege will be suspended by the department until any penalties imposed pursuant to this chapter have been satisfied; and

(i) A statement that failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in the suspension of the person's driver's license or driving privilege, or in the case of a standing, stopping, or parking violation, refusal of the department to renew the vehicle license, until any penalties imposed pursuant to this chapter have been satisfied.

(3) A form for a notice of traffic infraction printed after July 22, 2011, must include a statement that the person may be able to enter into a payment plan with the court under RCW 46.63.110. [2011 c 233 § 1; 2006 c 270 § 2; 1993 c 501 § 9; 1984 c 224 § 2; 1982 1st ex.s. c 14 § 2; 1980 c 128 § 1; 1979 ex.s. c 136 § 8.]

Additional notes found at www.leg.wa.gov

46.63.070 Response to notice—Contesting determination—Hearing—Failure to respond or appear. (Effective July 1, 2012.) (1) Any person who receives a notice of traffic infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) If the person determined to have committed the infraction does not contest the determination the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department in accordance with RCW 46.20.270.

(3) If the person determined to have committed the infraction wishes to contest the determination the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than seven days from the date of the notice, except by agreement.

(4) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing.

(5)(a) Except as provided in (b), (c), and (d) of this subsection, in hearings conducted pursuant to subsections (3) and (4) of this section, the court may defer findings, or in a hearing to explain mitigating circumstances may defer entry of its order, for up to one year and impose conditions upon the defendant the court deems appropriate. Upon deferring findings, the court may assess costs as the court deems appropriate for administrative processing. If at the end of the deferral period the defendant has met all conditions and has

not been determined to have committed another traffic infraction, the court may dismiss the infraction.

(b) A person may not receive more than one deferral within a seven-year period for traffic infractions for moving violations and more than one deferral within a seven-year period for traffic infractions for nonmoving violations.

(c) A person who is the holder of a commercial driver's license or who was operating a commercial motor vehicle at the time of the violation may not receive a deferral under this section.

(d) A person who commits negligent driving in the second degree with a vulnerable user victim may not receive a deferral for this infraction under this section.

(6) If any person issued a notice of traffic infraction:

(a) Fails to respond to the notice of traffic infraction as provided in subsection (2) of this section; or

(b) Fails to appear at a hearing requested pursuant to subsection (3) or (4) of this section;

the court shall enter an appropriate order assessing the monetary penalty prescribed for the traffic infraction and any other penalty authorized by this chapter and shall notify the department in accordance with RCW 46.20.270, of the failure to respond to the notice of infraction or to appear at a requested hearing. [2011 c 372 § 3; 2006 c 327 § 7; 2004 c 187 § 10; 2000 c 110 § 1; 1993 c 501 § 10; 1984 c 224 § 3; 1982 1st ex.s. c 14 § 3; 1980 c 128 § 2; 1979 ex.s. c 136 § 9.]

Application—Effective date—2011 c 372: See notes following RCW 46.61.526.

Effective date—2004 c 187 §§ 1, 5, 7, 8, and 10: See note following RCW 46.20.308.

Additional notes found at www.leg.wa.gov

46.63.075 Toll and safety camera infractions—Presumption. (Contingent expiration date.) (1) In a traffic infraction case involving an infraction detected through the use of a photo enforcement system under RCW 46.63.160, detected through the use of an automated traffic safety camera under RCW 46.63.170, or detected through the use of an automated school bus safety camera under RCW 46.63.180, proof that the particular vehicle described in the notice of traffic infraction was in violation of any such provision of RCW 46.63.160 or 46.63.170, together with proof that the person named in the notice of traffic infraction was at the time of the violation the registered owner of the vehicle, constitutes in evidence a prima facie presumption that the registered owner of the vehicle was the person in control of the vehicle at the point where, and for the time during which, the violation occurred.

(2) This presumption may be overcome only if the registered owner states, under oath, in a written statement to the court or in testimony before the court that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person other than the registered owner. [2011 c 375 § 6; 2005 c 167 § 3; 2004 c 231 § 3.]

Intent—2011 c 375: See note following RCW 46.63.180.

46.63.075 Safety camera infractions—Presumption. (Contingent effective date.) (1) In a traffic infraction case involving an infraction detected through the use of an automated traffic safety camera under RCW 46.63.170 or detected through the use of an automated school bus safety

camera under RCW 46.63.180, proof that the particular vehicle described in the notice of traffic infraction was in violation of any such provision of RCW 46.63.170, together with proof that the person named in the notice of traffic infraction was at the time of the violation the registered owner of the vehicle, constitutes in evidence a prima facie presumption that the registered owner of the vehicle was the person in control of the vehicle at the point where, and for the time during which, the violation occurred.

(2) This presumption may be overcome only if the registered owner states, under oath, in a written statement to the court or in testimony before the court that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person other than the registered owner. [2011 c 375 § 7; 2010 c 249 § 7; 2005 c 167 § 3; 2004 c 231 § 3.]

Contingent effective date—2011 c 375 §§ 5, 7, and 9: See note following RCW 46.63.030.

Intent—2011 c 375: See note following RCW 46.63.180.

Contingent effective date—2010 c 249: See note following RCW 47.56.795.

46.63.160 Photo toll systems—Civil penalties for nonpayment of tolls—System requirements—Rules. (Contingent effective date.) (1) This section applies only to civil penalties for nonpayment of tolls detected through use of photo toll systems.

(2) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(3) A notice of civil penalty may be issued by the department of transportation when a toll is assessed through use of a photo toll system and the toll is not paid by the toll payment due date, which is eighty days from the date the vehicle uses the toll facility and incurs the toll charge.

(4) Any registered owner or renter of a vehicle traveling upon a toll facility operated under chapter 47.56 or 47.46 RCW is subject to a civil penalty governed by the administrative procedures set forth in this section when the vehicle incurs a toll charge and the toll is not paid by the toll payment due date, which is eighty days from the date the vehicle uses the toll facility and incurs the toll charge.

(5) Consistent with chapter 34.05 RCW, the department of transportation shall develop an administrative adjudication process to review appeals of civil penalties issued by the department of transportation for toll nonpayment detected through the use of a photo toll system under this section.

(6) The use of a photo toll system is subject to the following requirements:

(a) Photo toll systems may take photographs, digital photographs, microphotographs, videotapes, or other recorded images of the vehicle and vehicle license plate only.

(b) A notice of civil penalty must include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a photo toll system, stating the facts supporting the notice of civil penalty. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding established under subsection (5) of this section. The photographs, digital photographs, micro-

photographs, videotape, or other recorded images evidencing the toll nonpayment civil penalty must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the civil penalty.

(c) Notwithstanding any other provision of law, all photographs, digital photographs, microphotographs, videotape, other recorded images, or other records identifying a specific instance of travel prepared under this chapter are for the exclusive use of the tolling agency for toll collection and enforcement purposes and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a civil penalty under this chapter. No photograph, digital photograph, microphotograph, videotape, other recorded image, or other record identifying a specific instance of travel may be used for any purpose other than toll collection or enforcement of civil penalties under this section. Records identifying a specific instance of travel by a specific person or vehicle must be retained only as required to ensure payment and enforcement of tolls and to comply with state records retention policies.

(d) All locations where a photo toll system is used must be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where tolls are assessed and enforced by a photo toll system.

(e) Within existing resources, the department of transportation shall conduct education and outreach efforts at least six months prior to activating an all-electronic photo toll system. Methods of outreach shall include a department presence at community meetings in the vicinity of a toll facility, signage, and information published in local media. Information provided shall include notice of when all electronic photo tolling shall begin and methods of payment. Additionally, the department shall provide quarterly reporting on education and outreach efforts and other data related to the issuance of civil penalties.

(7) Civil penalties for toll nonpayment detected through the use of photo toll systems must be issued to the registered owner of the vehicle identified by the photo toll system, but are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120.

(8) The civil penalty for toll nonpayment detected through the use of a photo toll system is forty dollars plus the photo toll and associated fees.

(9) Except as provided otherwise in this subsection, all civil penalties, including the photo toll and associated fees, collected under this section must be deposited into the toll facility account of the facility on which the toll was assessed. However, through June 30, 2013, civil penalties deposited into the Tacoma Narrows toll bridge account created under RCW 47.56.165 that are in excess of amounts necessary to support the toll adjudication process applicable to toll collection on the Tacoma Narrows bridge must first be allocated toward repayment of operating loans and reserve payments provided to the account from the motor vehicle account under section 1005(15), chapter 518, Laws of 2007. Additionally, all civil penalties, resulting from nonpayment of tolls on the state route number 520 corridor, shall be deposited into the state route number 520 civil penalties account created under section 4, chapter 248, Laws of 2010 but only if chapter 248, Laws of 2010 is enacted by June 30, 2010.

(10) If the registered owner of the vehicle is a rental car business, the department of transportation shall, before a toll bill is issued, provide a written notice to the rental car business that a toll bill may be issued to the rental car business if the rental car business does not, within thirty days of the mailing of the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the toll was assessed; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the toll was assessed because the vehicle was stolen at the time the toll was assessed. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable toll and fee.

Timely mailing of this statement to the issuing agency relieves a rental car business of any liability under this section for the payment of the toll.

(11) Consistent with chapter 34.05 RCW, the department of transportation shall develop rules to implement this section.

(12) For the purposes of this section, "photo toll system" means the system defined in RCW 47.56.010 and 47.46.020. [2011 c 367 § 705; 2010 c 249 § 6; 2009 c 272 § 1. Prior: 2007 c 372 § 2; 2007 c 101 § 2; 2004 c 231 § 6.]

Contingent effective date—2011 c 367 §§ 705 and 722: "Sections 705 and 722 of this act take effect upon certification by the secretary of transportation that the new statewide tolling operations center and photo toll system are fully operational. A notice of certification must be filed with the code reviser for publication in the state register. If a certificate is not issued by the secretary of transportation by December 1, 2012, sections 705 and 722 of this act are null and void." [2011 c 367 § 1104.]

Contingent effective date—2010 c 249: See note following RCW 47.56.795.

Report to legislature—2009 c 272: "The department shall report to the transportation committees of the legislature by December 1, 2009, with recommendations regarding implementing a time period for the payment of tolls after crossing the Tacoma Narrows bridge in which individuals without a transponder could pay the toll due prior to the issuance of an infraction." [2009 c 272 § 2.]

46.63.170 Automated traffic safety cameras—Definition. (1) The use of automated traffic safety cameras for issuance of notices of infraction is subject to the following requirements:

(a) The appropriate local legislative authority must first enact an ordinance allowing for their use to detect one or more of the following: Stoplight, railroad crossing, or school speed zone violations. At a minimum, the local ordinance must contain the restrictions described in this section and provisions for public notice and signage. Cities and counties using automated traffic safety cameras before July 24, 2005, are subject to the restrictions described in this section, but are not required to enact an authorizing ordinance.

(b) Use of automated traffic safety cameras is restricted to two-arterial intersections, railroad crossings, and school speed zones only.

(c) During the 2011-2013 fiscal biennium, automated traffic safety cameras may be used to detect speed violations for the purposes of section 201(2), chapter 367, Laws of 2011

if the local legislative authority first enacts an ordinance authorizing the use of cameras to detect speed violations.

(d) Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle.

(e) A notice of infraction must be mailed to the registered owner of the vehicle within fourteen days of the violation, or to the renter of a vehicle within fourteen days of establishing the renter's name and address under subsection (3)(a) of this section. The law enforcement officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, or electronic images produced by an automated traffic safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated traffic safety camera may respond to the notice by mail.

(f) The registered owner of a vehicle is responsible for an infraction under *RCW 46.63.030(1)(e) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (3) of this section. If appropriate under the circumstances, a renter identified under subsection (3)(a) of this section is responsible for an infraction.

(g) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

(h) All locations where an automated traffic safety camera is used must be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera.

(i) If a county or city has established an authorized automated traffic safety camera program under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.

(2) Infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW 3.50.100, 35.20.220, 46.16A.120, and

46.20.270(3). However, the amount of the fine issued for an infraction generated through the use of an automated traffic safety camera shall not exceed the amount of a fine issued for other parking infractions within the jurisdiction.

(3) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction being issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(4) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(5) For the purposes of this section, "automated traffic safety camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit in a school speed zone as detected by a speed measuring device. During the 2011-2013 fiscal biennium, an automated traffic safety camera includes a camera used to detect speed violations for the purposes of section 201(2), chapter 367, Laws of 2011.

(6) During the 2011-2013 fiscal biennium, this section does not apply to automated traffic safety cameras for the purposes of section 216(5), chapter 367, Laws of 2011. [2011 c 367 § 704; 2010 c 161 § 1127; 2009 c 470 § 714; 2007 c 372 § 3; 2005 c 167 § 1.]

***Reviser's note:** RCW 46.63.030 was amended by 2010 c 249 § 5, which has a contingent effective date, changing subsection (1)(e) to subsection (1)(d).

Effective date—2011 c 367 §§ 703, 704, 716, and 719: See note following RCW 46.18.060.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective date—2009 c 470: See note following RCW 46.68.170.

46.63.180 Automated school bus safety cameras—Definition. (1) School districts may install and operate automated school bus safety cameras on school buses to be used

for the detection of violations of RCW 46.61.370(1) if the use of the cameras is approved by a vote of the school district board of directors. School districts are not required to take school buses out of service if the buses are not equipped with automated school bus safety cameras or functional automated safety cameras. Further, school districts shall be held harmless from and not liable for any criminal or civil liability arising under the provisions of this section.

(a) Automated school bus safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle.

(b) A notice of infraction must be mailed to the registered owner of the vehicle within fourteen days of the violation, or to the renter of a vehicle within fourteen days of establishing the renter's name and address under subsection (2)(a)(i) of this section. The law enforcement officer issuing the notice of infraction shall include a certificate or facsimile of the notice, based upon inspection of photographs, microphotographs, or electronic images produced by an automated school bus safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated school bus safety camera may respond to the notice by mail.

(c) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030(1)(e) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (2) of this section. If appropriate under the circumstances, a renter identified under subsection (2)(a)(i) of this section is responsible for an infraction.

(d) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

(e) If a school district installs and operates an automated school bus safety camera under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment. Further, any repair, replacement, or administrative work costs related to installing or repairing automated school bus safety cameras must be solely paid for by the manufacturer or vendor of the cameras. Before entering into a contract with the manufacturer or vendor of the equipment used under this subsection (1)(e), the school district must follow the competitive bid process as outlined in RCW 28A.335.190(1).

(f) Any revenue collected from infractions detected through the use of automated school bus safety cameras, less the administration and operating costs of the cameras, must be remitted to school districts for school zone safety projects as determined by the school district using the automated school bus safety cameras. The administration and operating costs of the cameras includes infraction enforcement and processing costs that are incurred by local law enforcement or local courts.

(2)(a) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction is issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen days of receiving the written notice, provide to the issuing agency by return mail:

(i) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred;

(ii) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection (2)(a)(ii) must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(iii) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

(b) Timely mailing of a statement under this subsection to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(3) For purposes of this section, "automated school bus safety camera" means a device that is affixed to a school bus that is synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a vehicle at the time the vehicle is detected for an infraction identified in RCW 46.61.370(1). [2011 c 375 § 2.]

Intent—2011 c 375: "The legislature recognizes that the safe transportation of children to and from school is a shared responsibility of the school district and the driving public. In order to increase public awareness of their responsibility, it is the intent of the legislature that the state superintendent of public instruction coordinate with school districts and any other relevant agencies who voluntarily choose to participate in a national stop arm violation day annually between March 1st and May 15th." [2011 c 375 § 1.]

Chapter 46.66 RCW

WASHINGTON AUTO THEFT PREVENTION AUTHORITY

Sections

46.66.080 Washington auto theft prevention authority account.

46.66.080 Washington auto theft prevention authority account. (1) The Washington auto theft prevention authority account is created in the state treasury, subject to appropriation. All revenues from the traffic infraction surcharge in RCW 46.63.110(7)(b) and all receipts from gifts, grants, bequests, devises, or other funds from public and private sources to support the activities of the auto theft prevention authority must be deposited into the account. Expendi-

tures from the account may be used only for activities relating to motor vehicle theft, including education, prevention, law enforcement, investigation, prosecution, and confinement. During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may appropriate moneys from the Washington auto theft prevention authority account for criminal justice purposes and community building and may transfer funds to the state general fund such amounts as reflect the excess fund balance of the account.

(2) The authority shall allocate moneys appropriated from the account to public agencies for the purpose of establishing, maintaining, and supporting programs that are designed to prevent motor vehicle theft, including:

(a) Financial support to prosecution agencies to increase the effectiveness of motor vehicle theft prosecution;

(b) Financial support to a unit of local government or a team consisting of units of local governments to increase the effectiveness of motor vehicle theft enforcement;

(c) Financial support for the procurement of equipment and technologies for use by law enforcement agencies for the purpose of enforcing motor vehicle theft laws; and

(d) Financial support for programs that are designed to educate and assist the public in the prevention of motor vehicle theft.

(3) The costs of administration shall not exceed ten percent of the moneys in the account in any one year so that the greatest possible portion of the moneys available to the authority is expended on combating motor vehicle theft.

(4) Prior to awarding any moneys from the Washington auto theft prevention authority account for motor vehicle theft enforcement, the auto theft prevention authority must verify that the financial award includes sufficient funding to cover proposed activities, which include, but are not limited to: (a) State, municipal, and county offender and juvenile confinement costs; (b) administration costs; (c) law enforcement costs; (d) prosecutor costs; and (e) court costs, with a priority being given to ensuring that sufficient funding is available to cover state, municipal, and county offender and juvenile confinement costs.

(5) Moneys expended from the Washington auto theft prevention authority account under subsection (2) of this section shall be used to supplement, not supplant, other moneys that are available for motor vehicle theft prevention.

(6) Grants provided under subsection (2) of this section constitute reimbursement for purposes of RCW 43.135.060(1). [2011 1st sp.s. c 50 § 958; 2011 c 5 § 915; 2009 c 564 § 945; 2007 c 199 § 27.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2011 c 5: See note following RCW 43.79.487.

Effective date—2009 c 564: See note following RCW 2.68.020.

Chapter 46.68 RCW DISPOSITION OF REVENUE

Sections

46.68.020	Disposition of certificates of title fees.
46.68.025	Distribution of quick title service fees. (<i>Effective January 1, 2012.</i>)
46.68.030	Disposition of vehicle registration and license fees.
46.68.060	Highway safety fund.
46.68.090	Distribution of statewide fuel taxes.

46.68.110	Distribution of amount allocated to cities and towns.
46.68.113	Preservation rating.
46.68.160	Decodified.
46.68.170	RV account.
46.68.220	Department of licensing services account.
46.68.325	Rural mobility grant program account.
46.68.370	License plate technology account.
46.68.380	Special license plate applicant trust account.
46.68.420	Special license plate fees by account—Disposition. (<i>Effective until January 1, 2012.</i>)
46.68.420	Special license plate fees by account—Disposition. (<i>Effective January 1, 2012.</i>)
46.68.425	Special license plate fees by plate type—Disposition.
46.68.455	Vehicle trip permit fee—Distribution.
46.68.470	Congestion reduction charges—Contracts.

46.68.020 Disposition of certificates of title fees. The director shall forward all fees for certificates of title or other moneys accruing under chapters 46.12 and 46.17 RCW to the state treasurer, together with a proper identifying detailed report. The state treasurer shall credit these moneys as follows:

FEE	REQUIRED IN	ESTABLISHED IN	DISTRIBUTION
ORV certificate of title fee	RCW 46.09.320	RCW 46.17.100	RCW 47.66.070
Original certificate of title	RCW 46.12.530	RCW 46.17.100	RCW 47.66.070
Penalty for late transfer	RCW 46.12.650	RCW 46.17.140	RCW 47.66.070
Motor change	RCW 46.12.590	RCW 46.17.100	RCW 46.68.280
Transfer certificate of title	RCW 46.12.650	RCW 46.17.100	RCW 46.68.280
Security interest changes	RCW 46.12.675	RCW 46.17.100	RCW 46.68.280
Duplicate certificate of title	RCW 46.12.580	RCW 46.17.100	RCW 46.68.280
Stolen vehicle check	RCW 46.12.570	RCW 46.17.120	RCW 46.68.070
Vehicle identification number assignment	RCW 46.12.560	RCW 46.17.135	RCW 46.68.070

[2011 c 171 § 84; 2010 c 161 § 802; 2004 c 200 § 3; 2003 c 264 § 8; 2002 c 352 § 21; 1961 c 12 § 46.68.020. Prior: 1955 c 259 § 3; 1947 c 164 § 7; 1937 c 188 § 11; Rem. Supp. 1947 § 6312-11.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective date—2004 c 200: "This act takes effect July 1, 2004." [2004 c 200 § 4.]

Effective dates—2002 c 352: See note following RCW 46.09.410.

46.68.025 Distribution of quick title service fees. (*Effective January 1, 2012.*) (1) The quick title service fee imposed under RCW 46.17.160 must be distributed as follows:

(a) If the fee is paid to the director, the fee must be deposited to the motor vehicle fund established under RCW 46.68.070.

(b) If the fee is paid to the participating county auditor or other agent or subagent appointed by the director, twenty-five dollars must be deposited to the motor vehicle fund established under RCW 46.68.070. The remainder must be retained by the county treasurer in the same manner as other fees collected by the county auditor.

(2) For the purposes of this section, "quick title" has the same meaning as in RCW 46.12.555. [2011 c 326 § 3.]

Application—Effective date—2011 c 326: See notes following RCW 46.12.555.

46.68.030 Disposition of vehicle registration and license fees. (1) The director shall forward all fees for vehicle registrations under chapters 46.16A and 46.17 RCW, unless otherwise specified by law, to the state treasurer with a proper identifying detailed report. The state treasurer shall credit these moneys to the motor vehicle fund created in RCW 46.68.070.

(2) Proceeds from vehicle license fees and renewal vehicle license fees must be deposited by the state treasurer as follows:

(a) \$20.35 of each initial or renewal vehicle license fee must be deposited in the state patrol highway account in the motor vehicle fund, hereby created. Vehicle license fees, renewal vehicle license fees, and all other funds in the state patrol highway account must be for the sole use of the Washington state patrol for highway activities of the Washington state patrol, subject to proper appropriations and reappropriations.

(b) \$2.02 of each initial vehicle license fee and \$0.93 of each renewal vehicle license fee must be deposited each biennium in the Puget Sound ferry operations account.

(c) Any remaining amounts of vehicle license fees and renewal vehicle license fees that are not distributed otherwise under this section must be deposited in the motor vehicle fund. [2011 c 171 § 85; 2010 c 161 § 803; 2002 c 352 § 22; 1990 c 42 § 109; 1985 c 380 § 20. Prior: 1983 c 15 § 23; 1983 c 3 § 122; 1981 c 342 § 9; 1973 c 103 § 3; 1971 ex.s. c 231 § 11; 1971 ex.s. c 91 § 1; 1969 ex.s. c 281 § 25; 1969 c 99 § 8; 1965 c 25 § 2; 1961 ex.s. c 7 § 17; 1961 c 12 § 46.68.030; prior: 1957 c 105 § 2; 1955 c 259 § 4; 1947 c 164 § 15; 1937 c 188 § 40; Rem. Supp. 1947 § 6312-40.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective dates—2002 c 352: See note following RCW 46.09.410.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Refund of mobile home identification tag fees: "The department of motor vehicles shall refund all moneys collected in 1973 for mobile home identification tags. Such refunds shall be made to those persons who have purchased such tags. The department shall adopt rules pursuant to chapter 34.04 RCW to comply with the provisions of this section." [1973 c 103 § 4.]

Additional notes found at www.leg.wa.gov

46.68.060 Highway safety fund. There is hereby created in the state treasury a fund to be known as the highway safety fund to the credit of which must be deposited all moneys directed by law to be deposited therein. This fund must be used for carrying out the provisions of law relating to driver licensing, driver improvement, financial responsibility, cost of furnishing abstracts of driving records and maintaining such case records, and to carry out the purposes set forth in RCW 43.59.010, and chapters 46.72 and 46.72A RCW. During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may transfer from the highway safety fund to

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the motor vehicle fund and the multimodal transportation account such amounts as reflect the excess fund balance of the highway safety fund. [2011 c 367 § 718; 2011 c 298 § 26; 2009 c 470 § 711; 2007 c 518 § 714; 1969 c 99 § 11; 1967 c 174 § 4; 1965 c 25 § 3; 1961 c 12 § 46.68.060. Prior: 1957 c 104 § 1; 1937 c 188 § 81; RRS § 6312-81; 1921 c 108 § 13; RRS § 6375.]

Reviser's note: This section was amended by 2011 c 298 § 26 and by 2011 c 367 § 718, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 367: See note following RCW 47.29.170.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Deposits into account: RCW 46.20.505, 46.20.510, 46.81A.030.

Additional notes found at www.leg.wa.gov

46.68.090 Distribution of statewide fuel taxes. (1) All moneys that have accrued or may accrue to the motor vehicle fund from the motor vehicle fuel tax and special fuel tax shall be first expended for purposes enumerated in (a) and (b) of this subsection. The remaining net tax amount shall be distributed monthly by the state treasurer in accordance with subsections (2) through (7) of this section.

(a) For payment of refunds of motor vehicle fuel tax and special fuel tax that has been paid and is refundable as provided by law;

(b) For payment of amounts to be expended pursuant to appropriations for the administrative expenses of the offices of state treasurer, state auditor, and the department of licensing of the state of Washington in the administration of the motor vehicle fuel tax and the special fuel tax, which sums shall be distributed monthly.

(2) All of the remaining net tax amount collected under RCW 82.36.025(1) and 82.38.030(1) shall be distributed as set forth in (a) through (j) of this section.

(a) For distribution to the motor vehicle fund an amount equal to 44.387 percent to be expended for highway purposes of the state as defined in RCW 46.68.130;

(b) For distribution to the special category C account, hereby created in the motor vehicle fund, an amount equal to 3.2609 percent to be expended for special category C projects. Special category C projects are category C projects that, due to high cost only, will require bond financing to complete construction.

The following criteria, listed in order of priority, shall be used in determining which special category C projects have the highest priority:

- (i) Accident experience;
- (ii) Fatal accident experience;
- (iii) Capacity to move people and goods safely and at reasonable speeds without undue congestion; and
- (iv) Continuity of development of the highway transportation network.

Moneys deposited in the special category C account in the motor vehicle fund may be used for payment of debt service on bonds the proceeds of which are used to finance special category C projects under this subsection (2)(b);

(c) For distribution to the Puget Sound ferry operations account in the motor vehicle fund an amount equal to 2.3283 percent;

(d) For distribution to the Puget Sound capital construction account in the motor vehicle fund an amount equal to 2.3726 percent;

(e) For distribution to the transportation improvement account in the motor vehicle fund an amount equal to 7.5597 percent;

(f) For distribution to the transportation improvement account in the motor vehicle fund an amount equal to 5.6739 percent and expended in accordance with RCW 47.26.086;

(g) For distribution to the cities and towns from the motor vehicle fund an amount equal to 10.6961 percent in accordance with RCW 46.68.110;

(h) For distribution to the counties from the motor vehicle fund an amount equal to 19.2287 percent: (i) Out of which there shall be distributed from time to time, as directed by the department of transportation, those sums as may be necessary to carry out the provisions of RCW 47.56.725; and (ii) less any amounts appropriated to the county road administration board to implement the provisions of RCW 47.56.725(4), with the balance of such county share to be distributed monthly as the same accrues for distribution in accordance with RCW 46.68.120;

(i) For distribution to the county arterial preservation account, hereby created in the motor vehicle fund an amount equal to 1.9565 percent. These funds shall be distributed by the county road administration board to counties in proportions corresponding to the number of paved arterial lane miles in the unincorporated area of each county and shall be used for improvements to sustain the structural, safety, and operational integrity of county arterials. The county road administration board shall adopt reasonable rules and develop policies to implement this program and to assure that a pavement management system is used;

(j) For distribution to the rural arterial trust account in the motor vehicle fund an amount equal to 2.5363 percent and expended in accordance with RCW 36.79.020.

(3) The remaining net tax amount collected under RCW 82.36.025(2) and 82.38.030(2) shall be distributed to the transportation 2003 account (nickel account).

(4) The remaining net tax amount collected under RCW 82.36.025(3) and 82.38.030(3) shall be distributed as follows:

(a) 8.3333 percent shall be distributed to the incorporated cities and towns of the state in accordance with RCW 46.68.110;

(b) 8.3333 percent shall be distributed to counties of the state in accordance with RCW 46.68.120; and

(c) The remainder shall be distributed to the transportation partnership account created in RCW 46.68.290.

(5) The remaining net tax amount collected under RCW 82.36.025(4) and 82.38.030(4) shall be distributed as follows:

(a) 8.3333 percent shall be distributed to the incorporated cities and towns of the state in accordance with RCW 46.68.110;

(b) 8.3333 percent shall be distributed to counties of the state in accordance with RCW 46.68.120; and

(c) The remainder shall be distributed to the transportation partnership account created in RCW 46.68.290.

(6) The remaining net tax amount collected under RCW 82.36.025 (5) and (6) and 82.38.030 (5) and (6) shall be distributed to the transportation partnership account created in RCW 46.68.290.

(7) Nothing in this section or in RCW 46.68.130 may be construed so as to violate any terms or conditions contained in any highway construction bond issues now or hereafter authorized by statute and whose payment is by such statute pledged to be paid from any excise taxes on motor vehicle fuel and special fuels. [2011 c 120 § 4; 2005 c 314 § 103; 2003 c 361 § 403. Prior: 1999 c 269 § 2; 1999 c 94 § 6; prior: 1994 c 225 § 2; 1994 c 179 § 3; 1991 c 342 § 56; 1990 c 42 § 102; 1983 1st ex.s. c 49 § 21; 1979 c 158 § 184; 1977 ex.s. c 317 § 8; 1967 c 32 § 74; 1961 ex.s. c 7 § 5; 1961 c 12 § 46.68.090; prior: 1943 c 115 § 3; 1939 c 181 § 2; Rem. Supp. 1943 § 6600-1d; 1937 c 208 §§ 2, part, 3, part.]

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.68.035.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Rural arterial trust account: RCW 36.79.020.

Additional notes found at www.leg.wa.gov

46.68.110 Distribution of amount allocated to cities and towns. Funds credited to the incorporated cities and towns of the state as set forth in RCW 46.68.090 shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such sums distributed under RCW 46.68.090 shall be deducted monthly as such sums are credited and set aside for the use of the department of transportation for the supervision of work and expenditures of such incorporated cities and towns on the city and town streets thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: PROVIDED, That any moneys so retained and not expended shall be credited in the succeeding biennium to the incorporated cities and towns in proportion to deductions herein made;

(2) Thirty-three one-hundredths of one percent of such funds distributed under RCW 46.68.090 shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the cities' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the cities in proportion to the deductions made;

(3) One percent of such funds distributed under RCW 46.68.090 shall be deducted monthly, as such funds accrue, to be deposited in the small city pavement and sidewalk account, to implement the city hardship assistance program, as provided in RCW 47.26.164. However, any moneys so retained and not required to carry out the program under this

subsection as of July 1st of each odd-numbered year thereafter, shall be retained in the account and used for maintenance, repair, and resurfacing of city and town streets for cities and towns with a population of less than five thousand;

(4) After making the deductions under subsections (1) through (3) of this section and RCW 35.76.050, the balance remaining to the credit of incorporated cities and towns shall be apportioned monthly as such funds accrue among the several cities and towns within the state ratably on the basis of the population last determined by the office of financial management. [2011 c 120 § 5; 2008 c 121 § 601; 2007 c 148 § 1. Prior: 2005 c 314 § 106; 2005 c 89 § 1; 2003 c 361 § 404; prior: 1999 c 269 § 3; 1999 c 94 § 9; 1996 c 94 § 1; prior: 1991 sp.s. c 15 § 46; 1991 c 342 § 59; 1989 1st ex.s. c 6 § 41; 1987 1st ex.s. c 10 § 37; 1985 c 460 § 32; 1979 c 151 § 161; 1975 1st ex.s. c 100 § 1; 1961 ex.s. c 7 § 7; 1961 c 12 § 46.68.110; prior: 1957 c 175 § 11; 1949 c 143 § 1; 1943 c 83 § 2; 1941 c 232 § 1; 1939 c 181 § 4; Rem. Supp. 1949 § 6600-3a; 1937 c 208 §§ 2, part, 3, part.]

Severability—2008 c 121: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 121 § 606.]

Effective date—2008 c 121: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2008]." [2008 c 121 § 607.]

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.68.035.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Expense of cost-audit examination of city and town street records payable from funds withheld under RCW 46.68.110(1): RCW 35.76.050.

Population determination, office of financial management: Chapter 43.62 RCW.

Additional notes found at www.leg.wa.gov

46.68.113 Preservation rating. During the 2013-2015 biennium, cities and towns shall provide to the transportation commission, or its successor entity, preservation rating information on at least seventy percent of the total city and town arterial network. Thereafter, the preservation rating information requirement shall increase in five percent increments in subsequent biennia, but in no case shall it exceed eighty percent. The rating system used by cities and towns must be based upon the Washington state pavement rating method or an equivalent standard approved by the department of transportation. Beginning January 1, 2007, the preservation rating information shall be submitted to the department. [2011 c 353 § 7; 2006 c 334 § 21; 2003 c 363 § 305.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Effective date—2006 c 334: See note following RCW 47.01.051.

Finding—Intent—2003 c 363: See note following RCW 35.84.060.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

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46.68.160 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

46.68.170 RV account. There is hereby created in the motor vehicle fund the RV account. All moneys hereafter deposited in said account shall be used by the department of transportation for the construction, maintenance, and operation of recreational vehicle sanitary disposal systems at safety rest areas in accordance with the department's highway system plan as prescribed in chapter 47.06 RCW. During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may transfer from the RV account to the motor vehicle fund such amounts as reflect the excess fund balance of the RV account to accomplish the purposes identified in this section. [2011 c 367 § 715; 2009 c 470 § 701; 2007 c 518 § 701; 1996 c 237 § 2; 1980 c 60 § 3.]

Effective date—2011 c 367: See note following RCW 47.29.170.

Effective date—2009 c 470: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 2009]." [2009 c 470 § 802.]

Severability—2007 c 518: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 518 § 1101.]

Effective date—2007 c 518: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007]." [2007 c 518 § 1102.]

Additional license fees for recreational vehicles: RCW 46.16.063.

Additional notes found at www.leg.wa.gov

46.68.220 Department of licensing services account. The department of licensing services account is created in the motor vehicle fund. All receipts from service fees received under RCW 46.17.025 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for:

(1) Information and service delivery systems for the department;

(2) Reimbursement of county licensing activities; and

(3) County auditor or other agent and subagent support including, but not limited to, the replacement of department-owned equipment in the possession of county auditors or other agents and subagents appointed by the director. During the 2011-2013 fiscal biennium, the legislature may transfer from the department of licensing services account such amounts as reflect the excess fund balance of the account. [2011 c 367 § 719; 2010 c 161 § 807; 2009 c 470 § 712; 2009 c 8 § 503; 1992 c 216 § 5.]

Effective date—2011 c 367 §§ 703, 704, 716, and 719: See note following RCW 46.18.060.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective date—2009 c 470: See note following RCW 46.68.170.

Effective date—2009 c 8: See note following RCW 46.68.065.

46.68.325 Rural mobility grant program account. (1) The rural mobility grant program account is created in the state treasury. Moneys in the account may be spent only after

appropriation. Expenditures from the account may be used only for the grants provided under RCW 47.66.100.

(2) Beginning September 2011, by the last day of September, December, March, and June of each year, the state treasurer shall transfer from the multimodal transportation account to the rural mobility grant program account two million five hundred thousand dollars.

(3) During the 2011-2013 fiscal biennium, the legislature may transfer from the rural mobility grant program account to the multimodal transportation account such amounts as reflect the excess fund balance of the rural mobility grant program account. [2011 c 367 § 721; 2011 c 272 § 1.]

Effective date—2011 c 367: See note following RCW 47.29.170.

46.68.370 License plate technology account. The license plate technology account is created in the state treasury. All receipts collected under RCW 46.17.015 must be deposited into this account. Expenditures from this account must support current and future license plate technology and systems integration upgrades for both the department and correctional industries. Moneys in the account may be spent only after appropriation. Additionally, the moneys in this account may be used to reimburse the motor vehicle account for any appropriation made to implement the digital license plate system. During the 2011-2013 fiscal biennium, the legislature may transfer from the license plate technology account to the highway safety account such amounts as reflect the excess fund balance of the license plate technology account. [2011 c 367 § 716; 2010 c 161 § 818; 2009 c 470 § 704; 2007 c 518 § 704; 2003 c 370 § 4. Formerly RCW 46.16.685.]

Effective date—2011 c 367 §§ 703, 704, 716, and 719: See note following RCW 46.18.060.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

46.68.380 Special license plate applicant trust account. The special license plate applicant trust account is created in the custody of the state treasurer. All receipts from special license plate applicants must be deposited into the account. Only the director or the director's designee may authorize disbursements from the account. The account is not subject to the allotment procedures under chapter 43.88 RCW, and an appropriation is not required for disbursements. [2011 c 171 § 86; 2010 c 161 § 808.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.68.420 Special license plate fees by account—Disposition. (Effective until January 1, 2012.) (1) The department shall:

(a) Collect special license plate fees established under RCW 46.17.220;

(b) Deduct an amount not to exceed twelve dollars for initial issue and two dollars for renewal issue for administration and collection expenses incurred by it; and

(c) Remit the remaining proceeds to the custody of the state treasurer with a proper identifying detailed report.

(2) The state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the special license plate. Upon determination by the department that the state has been reimbursed, the state treasurer shall credit the remaining special license plate fee amounts for each special license plate to the following appropriate account as created in this section in the custody of the state treasurer:

ACCOUNT	CONDITIONS FOR USE OF FUNDS
Gonzaga University alumni association	Scholarship funds to needy and qualified students attending or planning to attend Gonzaga University
Helping kids speak	Provide free diagnostic and therapeutic services to families of children who suffer from a delay in language or speech development
Law enforcement memorial	Provide support and assistance to survivors and families of law enforcement officers in Washington killed in the line of duty and to organize, finance, fund, construct, utilize, and maintain a memorial on the state capitol grounds to honor those fallen officers
Lighthouse environmental programs	Support selected Washington state lighthouses that are accessible to the public and staffed by volunteers; provide environmental education programs; provide grants for other Washington lighthouses to assist in funding infrastructure preservation and restoration; encourage and support interpretive programs by lighthouse docents
Share the road	Promote bicycle safety and awareness education in communities throughout Washington
Ski & ride Washington	Promote winter snowsports, such as skiing and snowboarding, and related programs, such as ski and ride safety programs, underprivileged youth ski and ride programs, and active, healthy lifestyle programs
Washington state council of firefighters benevolent fund	Receive and disseminate funds for charitable purposes on behalf of members of the Washington state council of firefighters, their families, and others deemed in need
Washington's national park fund	Build awareness of Washington's national parks and support priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks
We love our pets	Support and enable the Washington federation of animal welfare and control agencies to promote and perform spay/neuter surgery of Washington state pets in order to reduce pet population

(3) Only the director or the director's designee may authorize expenditures from the accounts described in sub-

section (2) of this section. The accounts are subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) Funds in the special license plate accounts described in subsection (2) of this section must be disbursed subject to the conditions described in subsection (2) of this section and under contract between the department and qualified nonprofit organizations that provide the services described in subsection (2) of this section.

(5) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation operating in Washington that has received a determination of tax exempt status under 26 U.S.C. Sec. 501(c)(3). The qualified nonprofit organization must meet all the requirements under RCW 46.18.100(1). [2011 c 171 § 87; 2010 c 161 § 809.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.68.420 Special license plate fees by account—Disposition. (Effective January 1, 2012.) (1) The department shall:

(a) Collect special license plate fees established under RCW 46.17.220;

(b) Deduct an amount not to exceed twelve dollars for initial issue and two dollars for renewal issue for administration and collection expenses incurred by it; and

(c) Remit the remaining proceeds to the custody of the state treasurer with a proper identifying detailed report.

(2) The state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the special license plate. Upon determination by the department that the state has been reimbursed, the state treasurer shall credit the remaining special license plate fee amounts for each special license plate to the following appropriate account as created in this section in the custody of the state treasurer:

ACCOUNT	CONDITIONS FOR USE OF FUNDS
Gonzaga University alumni association	Scholarship funds to needy and qualified students attending or planning to attend Gonzaga University
Helping kids speak	Provide free diagnostic and therapeutic services to families of children who suffer from a delay in language or speech development
Law enforcement memorial	Provide support and assistance to survivors and families of law enforcement officers in Washington killed in the line of duty and to organize, finance, fund, construct, utilize, and maintain a memorial on the state capitol grounds to honor those fallen officers
Lighthouse environmental programs	Support selected Washington state lighthouses that are accessible to the public and staffed by volunteers; provide environmental education programs; provide grants for other Washington lighthouses to assist in funding infrastructure preservation and restoration; encourage and support interpretive programs by lighthouse docents

Music matters awareness	Promote music education in schools throughout Washington
Share the road	Promote bicycle safety and awareness education in communities throughout Washington
Ski & ride Washington	Promote winter snowsports, such as skiing and snowboarding, and related programs, such as ski and ride safety programs, underprivileged youth ski and ride programs, and active, healthy lifestyle programs
Volunteer firefighters	Receive and disseminate funds for purposes on behalf of volunteer firefighters, their families, and others deemed in need
Washington state council of firefighters benevolent fund	Receive and disseminate funds for charitable purposes on behalf of members of the Washington state council of firefighters, their families, and others deemed in need
Washington's national park fund	Build awareness of Washington's national parks and support priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks
We love our pets	Support and enable the Washington federation of animal welfare and control agencies to promote and perform spay/neuter surgery of Washington state pets in order to reduce pet population

(3) Only the director or the director's designee may authorize expenditures from the accounts described in subsection (2) of this section. The accounts are subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) Funds in the special license plate accounts described in subsection (2) of this section must be disbursed subject to the conditions described in subsection (2) of this section and under contract between the department and qualified nonprofit organizations that provide the services described in subsection (2) of this section.

(5) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation operating in Washington that has received a determination of tax exempt status under 26 U.S.C. Sec. 501(c)(3). The qualified nonprofit organization must meet all the requirements under RCW 46.18.100(1). [2011 c 229 § 4; 2011 c 225 § 3; 2011 c 171 § 87; 2010 c 161 § 809.]

Reviser's note: This section was amended by 2011 c 171 § 87, 2011 c 225 § 3, and by 2011 c 229 § 4, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 229: See note following RCW 46.18.200.

Effective date—2011 c 225: See note following RCW 46.18.200.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.68.425 Special license plate fees by plate type—Disposition. (1) The department shall:

(a) Collect special license plate fees established under RCW 46.17.220;

(b) Deduct an amount not to exceed twelve dollars for initial issue and two dollars for renewal issue for administration and collection expenses incurred by it; and

(c) Remit the remaining proceeds to the custody of the state treasurer with a proper identifying detailed report.

(2) The state treasurer shall credit the proceeds to the motor vehicle fund until the department determines that the state has been reimbursed for the cost of implementing the special license plate. Upon determination by the department that the state has been reimbursed, the state treasurer shall credit the remaining special license plate fees to the following accounts by special license plate type:

SPECIAL LICENSE PLATE TYPE	ACCOUNT	CONDITIONS FOR USE OF FUNDS
Armed forces	RCW 43.60A.140	N/A
Endangered wildlife	RCW 77.12.170	Must be used only for the department of fish and wildlife's endangered wildlife program activities
Keep kids safe	RCW 43.121.100	As specified in *RCW 43.121.050
Washington state parks	RCW 79A.05.059	Provide public educational opportunities and enhancement of Washington state parks
Washington's wildlife collection	RCW 77.12.170	Only for the department of fish and wildlife's game species management activities
Wild on Washington	RCW 77.12.170	Dedicated to the department of fish and wildlife's watchable wildlife activities, as defined in RCW 77.32.560

[2011 c 171 § 88; 2010 c 161 § 810.]

*Reviser's note: RCW 43.121.050 was repealed by 2011 1st sp.s. c 32 § 12, effective June 30, 2012.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.68.455 Vehicle trip permit fee—Distribution. The vehicle trip permit fee imposed under RCW 46.17.400(1)(h) must be distributed as follows:

(1) Five dollars to the state patrol highway account for commercial motor vehicle inspections;

(2) Five dollars to the motor vehicle fund created in RCW 46.68.070 to be distributed as follows:

(a) If paid by motor carriers, to be used for supporting vehicle weigh stations, weigh-in-motion programs, and the commercial vehicle information systems and networks programs; and

(b) If paid by a person other than a motor carrier, to be used for supporting congestion relief programs;

(3) A one dollar excise tax to the state general fund;

(4) The amount of the filing fee imposed under RCW 46.17.005(1) to be credited as required under RCW 46.68.400; and

(5) The remainder to the credit of the motor vehicle fund created in RCW 46.68.070 as an administrative fee.

The administrative fee must be increased or decreased in an equal amount if the amount of the filing fee imposed under RCW 46.17.005(1) increases or decreases, so that the total trip permit fee is adjusted equally to compensate. [2011 c 171 § 89; 2010 c 161 § 815.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.68.470 Congestion reduction charges—Contracts.

Whenever the department enters into a contract with the governing body of a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW and is operating a public transportation system for the collection of congestion reduction charges authorized under RCW 82.80.055:

(1) The contract must require that the governing body provide any information specified by the department to identify the vehicle owners who owe the congestion reduction charges, and must specify that it is the responsibility of the governing body to ensure that the congestion reduction charges are appropriately applied;

(2) The department is not responsible for the collection of congestion reduction charges until a date agreed to by both parties as specified in the contract;

(3) The department shall deduct a percentage amount as provided in the contract, not to exceed three percent of the charges collected, necessary to reimburse the department for the costs incurred for the collection of the congestion reduction charges; and

(4) The department shall remit remaining proceeds to the custody of the state treasurer. The state treasurer shall distribute the proceeds to the governing body on a monthly basis. [2011 c 373 § 3.]

Intent—2011 c 373: See note following RCW 82.80.055.

Chapter 46.70 RCW

DEALERS AND MANUFACTURERS

Sections

46.70.021	License required for dealers or manufacturers—Penalties.
46.70.027	Accountability of dealer for employees—Actions for damages on violation of chapter.
46.70.101	Denial, suspension, or revocation of licenses—Grounds.

46.70.021 License required for dealers or manufacturers—Penalties. (1) It is unlawful for any person, firm, or association to act as a vehicle dealer or vehicle manufacturer, to engage in business as such, serve in the capacity of such, advertise himself, herself, or themselves as such, solicit sales as such, or distribute or transfer vehicles for resale in this state, without first obtaining and holding a current license as provided in this chapter, unless the title of the vehicle is in the name of the seller.

(2) It is unlawful for any person other than a licensed vehicle dealer to display a vehicle for sale unless the registered owner or legal owner is the displayer or holds a notarized power of attorney.

(3)(a) Except as provided in (b) of this subsection, a person or firm engaged in buying and offering for sale, or buying and selling five or more vehicles in a twelve-month period, or in any other way engaged in dealer activity without holding a vehicle dealer license, is guilty of a gross misdemeanor, and upon conviction subject to a fine of up to five thousand dollars for each violation and up to three hundred sixty-four days in jail.

(b) A second offense is a class C felony punishable under chapter 9A.20 RCW.

(4) A violation of this section is also a per se violation of chapter 19.86 RCW and is considered a deceptive practice.

(5) The department of licensing, the Washington state patrol, the attorney general's office, and the department of revenue shall cooperate in the enforcement of this section.

(6) A distributor, factory branch, or factory representative shall not be required to have a vehicle manufacturer license so long as the vehicle manufacturer so represented is properly licensed pursuant to this chapter.

(7) Nothing in this chapter prohibits financial institutions from cooperating with vehicle dealers licensed under this chapter in dealer sales or leases. However, financial institutions shall not broker vehicles and cooperation is limited to organizing, promoting, and financing of such dealer sales or leases. [2011 c 96 § 36; 2003 c 53 § 249; 1993 c 307 § 4; 1988 c 287 § 2; 1986 c 241 § 3; 1973 1st ex.s. c 132 § 3; 1967 ex.s. c 74 § 4.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

46.70.027 Accountability of dealer for employees—Actions for damages on violation of chapter. A vehicle dealer is accountable for the dealer's employees, sales personnel, and managerial personnel while in the performance of their official duties. Any violations of this chapter or applicable provisions of chapter 46.12 or 46.16A RCW committed by any of these employees subjects the dealer to license penalties prescribed under RCW 46.70.101. A retail purchaser, consignee who is not a motor vehicle dealer, or a motor vehicle dealer who has purchased from a wholesale dealer, who has suffered a loss or damage by reason of any act by a dealer, salesperson, managerial person, or other employee of a dealership, that constitutes a violation of this chapter or applicable provisions of chapter 46.12 or 46.16A RCW may institute an action for recovery against the dealer and the surety bond as set forth in RCW 46.70.070. However, under this section, motor vehicle dealers who have purchased from wholesale dealers may only institute actions against wholesale dealers and their surety bonds. [2011 c 171 § 90; 1989 c 337 § 12; 1986 c 241 § 5.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.70.101 Denial, suspension, or revocation of licenses—Grounds. The director may by order deny, suspend, or revoke the license of any vehicle dealer or vehicle

manufacturer or, in lieu thereof or in addition thereto, may by order assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, if the director finds that the order is in the public interest and that the applicant or licensee:

(1) In the case of a vehicle dealer:

(a) The applicant or licensee, or any partner, officer, director, owner of ten percent or more of the assets of the firm, or managing employee:

(i) Was the holder of a license issued pursuant to this chapter, which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled or which license was assessed a civil penalty and the assessed amount has not been paid;

(ii) Has been adjudged guilty of a crime which directly relates to the business of a vehicle dealer and the time elapsed since the adjudication is less than ten years, or suffering any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purposes of this section, "adjudged guilty" means in addition to a final conviction in either a state or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the sentence is deferred or the penalty is suspended;

(iii) Has knowingly or with reason to know made a false statement of a material fact in his or her application for license or any data attached thereto, or in any matter under investigation by the department;

(iv) Has knowingly, or with reason to know, provided the department with false information relating to the number of vehicle sales transacted during the past one year in order to obtain a vehicle dealer license plate;

(v) Does not have an established place of business as required in this chapter;

(vi) Refuses to allow representatives or agents of the department to inspect during normal business hours all books, records, and files maintained within this state;

(vii) Sells, exchanges, offers, brokers, auctions, solicits, or advertises a new or current model vehicle to which a factory new vehicle warranty attaches and fails to have a valid, written service agreement as required by this chapter, or having such agreement refuses to honor the terms of such agreement within a reasonable time or repudiates the same, except for sales by wholesale motor vehicle auction dealers to franchise motor vehicle dealers of the same make licensed under this title or franchise motor vehicle dealers of the same make licensed by any other state;

(viii) Is insolvent, either in the sense that their liabilities exceed their assets, or in the sense that they cannot meet their obligations as they mature;

(ix) Fails to pay any civil monetary penalty assessed by the director pursuant to this section within ten days after such assessment becomes final;

(x) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183;

(xi) Knowingly, or with reason to know, allows a salesperson employed by the dealer, or acting as their agent, to commit any of the prohibited practices set forth in subsection (1)(a) of this section and RCW 46.70.180;

(xii) Fails to have a current certificate or registration with the department of revenue.

(b) The applicant or licensee, or any partner, officer, director, owner of ten percent of the assets of the firm, or any employee or agent:

(i) Has failed to comply with the applicable provisions of chapter 46.12 or 46.16A RCW or this chapter or any rules and regulations adopted thereunder;

(ii) Has defrauded or attempted to defraud the state, or a political subdivision thereof of any taxes or fees in connection with the sale, lease, or transfer of a vehicle;

(iii) Has forged the signature of the registered or legal owner on a certificate of title;

(iv) Has purchased, sold, disposed of, or has in his or her possession any vehicle which he or she knows or has reason to know has been stolen or appropriated without the consent of the owner;

(v) Has willfully failed to deliver to a purchaser or owner a certificate of title to a vehicle which he or she has sold or leased;

(vi) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates or manufacturer license plates;

(vii) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(viii) Has engaged in practices inimical to the health or safety of the citizens of the state of Washington including but not limited to failure to comply with standards set by the state of Washington or the federal government pertaining to the construction or safety of vehicles, except for sales by wholesale motor vehicle auction dealers to motor vehicle dealers and vehicle wreckers licensed under this title or motor vehicle dealers licensed by any other state;

(ix) Has aided or assisted an unlicensed dealer or salesperson in unlawful activity through active or passive participation in sales, allowing use of facilities, dealer license number, or by any other means;

(x) Converts or appropriates, whether temporarily or permanently, property or funds belonging to a customer, dealer, or manufacturer, without the consent of the owner of the property or funds; or

(xi) Has sold any vehicle with actual knowledge that:

(A) It has any of the following brands on the title: "SALVAGE/REBUILT," "JUNK," or "DESTROYED"; or

(B) It has been declared totaled out by an insurance carrier and then rebuilt; or

(C) The vehicle title contains the specific comment that the vehicle is "rebuilt";

without clearly disclosing that brand or comment in writing.

(c) The licensee or any partner, officer, director, or owner of ten percent or more of the assets of the firm holds or has held any such position in any other vehicle dealership licensed pursuant to this chapter which is subject to final proceedings under this section.

(2) In the case of a manufacturer, or any partner, officer, director, or majority shareholder:

(a) Was or is the holder of a license issued pursuant to this chapter which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled, or

which license was assessed a civil penalty and the assessed amount has not been paid;

(b) Has knowingly or with reason to know, made a false statement of a material fact in his or her application for license, or any data attached thereto, or in any matter under investigation by the department;

(c) Has failed to comply with the applicable provisions of chapter 46.12 or 46.16A RCW or this chapter or any rules and regulations adopted thereunder;

(d) Has defrauded or attempted to defraud the state or a political subdivision thereof, of any taxes or fees in connection with the sale, lease, or transfer of a vehicle;

(e) Has purchased, sold, leased, disposed of, or has in his or her possession, any vehicle which he or she knows or has reason to know has been stolen or appropriated without the consent of the owner;

(f) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates and manufacturer license plates;

(g) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(h) Sells or distributes in this state or transfers into this state for resale or for lease, any new or unused vehicle to which a warranty attaches or has attached and refuses to honor the terms of such warranty within a reasonable time or repudiates the same;

(i) Fails to maintain one or more resident employees or agents to provide service or repairs to vehicles located within the state of Washington only under the terms of any warranty attached to new or unused vehicles manufactured and which are or have been sold or distributed in this state or transferred into this state for resale or for lease unless such manufacturer requires warranty service to be performed by all of its dealers pursuant to a current service agreement on file with the department;

(j) Fails to reimburse within a reasonable time any vehicle dealer within the state of Washington who in good faith incurs reasonable obligations in giving effect to warranties that attach or have attached to any new or unused vehicle sold, leased, or distributed in this state or transferred into this state for resale or for lease by any such manufacturer;

(k) Engaged in practices inimical to the health and safety of the citizens of the state of Washington including, but not limited to, failure to comply with standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles;

(l) Is insolvent either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature;

(m) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183. [2011 c 171 § 91; 2010 c 161 § 1132; 2001 c 272 § 6; 1998 c 282 § 7; 1996 c 282 § 3; 1991 c 140 § 3; 1989 c 337 § 16; 1986 c 241 § 13; 1981 c 152 § 5; 1977 ex.s. c 125 § 3; 1973 1st ex.s. c 132 § 14; 1969 ex.s. c 63 § 4; 1967 ex.s. c 74 § 11.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 46.71 RCW
AUTOMOTIVE REPAIR

Sections

- 46.71.011 Definitions.
46.71.080 Notice of chapter to vehicle owners.

46.71.011 Definitions. For purposes of this chapter:

(1) An "aftermarket body part" or "nonoriginal equipment manufacturer body part" is an exterior body panel or nonstructural body component manufactured by someone other than the original equipment manufacturer and supplied through suppliers other than those in the manufacturer's normal distribution channels.

(2) "Automotive repair" includes but is not limited to:

(a) All repairs to vehicles subject to chapter 46.16A RCW that are commonly performed in a repair facility by a motor vehicle technician including the diagnosis, installation, exchange, or repair of mechanical or electrical parts or units for any vehicle, the performance of any electrical or mechanical adjustment to any vehicle, or the performance of any service work required for routine maintenance or repair of any vehicle. However, commercial fleet repair or maintenance transactions involving two or more vehicles or ongoing service or maintenance contracts involving vehicles used primarily for business purposes are not included;

(b) All work in facilities that perform one or more specialties within the automotive repair service industry including, but not limited to, body collision repair, refinishing, brake, electrical, exhaust repair or installation, frame, uni-body, front-end, radiators, tires, transmission, tune-up, and windshield; and

(c) The removal, replacement, or repair of exterior body panels, the removal, replacement, or repair of structural and nonstructural body components, the removal, replacement, or repair of collision damaged suspension components, and the refinishing of automotive components.

(3) "Automotive repair facility" or "repair facility" means any person, firm, association, or corporation who for compensation engages in the business of automotive repair or diagnosis, or both, of malfunctions of motor vehicles subject to licensure under chapter 46.16A RCW and repair and refinishing auto-body collision damage as well as overall refinishing and cosmetic repairs.

(4) A "rebuilt" part consists of a used assembly that has been dismantled and inspected with only the defective parts being replaced.

(5) A "remanufactured" part consists of a used assembly that has been dismantled with the core parts being remachined and all other parts replaced with new parts so as to provide performance comparable to that found originally. [2011 c 171 § 92; 1993 c 424 § 2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

46.71.080 Notice of chapter to vehicle owners. Whenever a vehicle license renewal form under RCW 46.16A.110 is given to the registered owner of any vehicle, the department of licensing shall give to the owner written notice of the

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provisions of this chapter in a manner prescribed by the director of licensing. [2011 c 171 § 93; 1982 c 62 § 10.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Chapter 46.72 RCW

**TRANSPORTATION OF PASSENGERS
IN FOR HIRE VEHICLES**

Sections

- 46.72.073 Certificate suspension or revocation—Failure to pay industrial insurance premiums—Rules—Cooperative agreements.
(Effective January 1, 2012.)
46.72.110 Fees to highway safety fund.

46.72.073 Certificate suspension or revocation—Failure to pay industrial insurance premiums—Rules—Cooperative agreements. *(Effective January 1, 2012.)* (1) A for hire vehicle certificate issued pursuant to this chapter must be suspended or revoked and may not be renewed in the event of failure to pay the mandatory for hire vehicle operator industrial insurance premium as charged by the department of labor and industries under RCW 51.12.183 and 51.16.240.

(2)(a) A for hire vehicle and its operator must have evidence of payment in good standing with the department of labor and industries of the for hire vehicle operator industrial insurance premium, whenever the for hire vehicle is operated on public streets and highways for compensation.

(b) Failure to produce evidence of payment of the for hire vehicle insurance premium upon demand by a law enforcement officer or other government agent acting under the authority of this chapter is a civil infraction punishable by a fine of not more than two hundred fifty dollars per infraction separately upon both the for hire vehicle owner and the for hire vehicle operator if they are not one and the same.

(3) For hire vehicle license suspension or revocation and the administration thereof for failure to pay the mandatory industrial insurance premium must be at the direction and expense of the department of labor and industries.

(4) The department of labor and industries and the department of licensing may adopt rules and enter into cooperative agreements to implement this section. [2011 c 190 § 5.]

Effective date—2011 c 190: See note following RCW 51.12.180.

46.72.110 Fees to highway safety fund. All fees received by the director under the provisions of this chapter must be transmitted by him or her, together with a proper identifying report, to the state treasurer to be deposited by the state treasurer in the highway safety fund. Appropriations from the highway safety fund will support expenses incurred in carrying out the licensing and regulatory activities of this chapter. [2011 c 298 § 27; 2010 c 8 § 9091; 1967 c 32 § 87; 1961 c 12 § 46.72.110. Prior: 1947 c 253 § 10; Rem. Supp. 1947 § 6386-10. Formerly RCW 81.72.110.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Chapter 46.72A RCW

LIMOUSINES

Sections

- 46.72A.010 Finding and intent. (*Effective January 1, 2012.*)
 46.72A.020 Engagement of and fares for carrier services—Service records—Carrier information—Penalties—Rules. (*Effective January 1, 2012.*)
 46.72A.030 Regulation—Inspection—Fees—Penalties. (*Effective January 1, 2012.*)
 46.72A.040 State preemption—Exceptions. (*Effective January 1, 2012.*)
 46.72A.050 Registration—Carrier license, vehicle certificates required—Rules—Penalty. (*Effective January 1, 2012.*)
 46.72A.053 Certificate suspension or revocation—Failure to pay industrial insurance premiums—Rules—Cooperative agreements. (*Effective January 1, 2012.*)
 46.72A.060 Insurance—Amount—Penalty. (*Effective January 1, 2012.*)
 46.72A.080 Advertising—Penalties. (*Effective January 1, 2012.*)
 46.72A.090 Chauffeurs—Criteria for, physical exams. (*Effective January 1, 2012.*)
 46.72A.100 Unprofessional conduct—Sanctions—Chauffeur. (*Effective January 1, 2012.*)
 46.72A.110 Deposit of fees.
 46.72A.120 Rules and fees. (*Effective January 1, 2012.*)
 46.72A.140 Uniform regulation of business and professions act. (*Effective January 1, 2012.*)
 46.72A.150 Cooperative agreements with cities with populations of five hundred thousand or more—Enforcement authority, limitations. (*Effective January 1, 2012.*)
 46.72A.160 Limousine carriers account. (*Effective July 1, 2012.*)

46.72A.010 Finding and intent. (*Effective January 1, 2012.*) The legislature finds and declares that privately operated limousine transportation service is a vital part of the transportation system within the state and provides prearranged transportation services to state residents, tourists, and out-of-state business people. Consequently, the safety, reliability, and stability of privately operated limousine transportation services are matters of statewide importance. The regulation of privately operated limousine transportation services is thus an essential governmental function. Therefore, it is the intent of the legislature to permit the department and a port district in a county with a population of one million or more to regulate limousine transportation services without liability under federal antitrust laws. It is further the intent of the legislature to authorize a city with a population of five hundred thousand or more to enforce this chapter through a joint agreement with the department, and to direct the department to provide annual funding from limousine regulation-related fees that provide sufficient funds to such a city to provide delegated enforcement. [2011 c 374 § 1; 1996 c 87 § 4.]

Effective date—2011 c 374 §§ 1-12: "Sections 1 through 12 of this act take effect January 1, 2012." [2011 c 374 § 15.]

Report by internal work group on issuance of chauffeur licenses—2011 c 374: See note following RCW 46.72A.090.

Additional notes found at www.leg.wa.gov

46.72A.020 Engagement of and fares for carrier services—Service records—Carrier information—Penalties—Rules. (*Effective January 1, 2012.*) (1) Contact by a customer or customer's agent to engage the services of a carrier's limousine must be initiated by a customer or customer's agent at a time and place different from the customer's time and place of departure. The fare for service must be agreed upon prior to departure. Under no circumstances may customers or customers' agents make arrangements to immediately engage the services of a carrier's limousine with the chauffeur, even if the chauffeur is an owner

or officer of the company, with the single exception of stand-hail limousines only at a facility owned and operated by a port district in a county with a population of one million or more that are licensed and restricted by the rules and policies set forth by the port district.

(2) At the time of the conduct of the commercial limousine business, the chauffeur of a limousine and the limousine carrier business must possess written or electronic records substantiating the prearrangement of the carrier's services for any customer carried for compensation, except for vehicles meeting the requirements of the exception for stand-hail limousines described in subsection (1) of this section. Limousine carriers and limousine chauffeurs operating as an independent business must list a physical address on their master business license where records substantiating the prearrangement of the carrier's services may be reviewed by an enforcement officer. A limousine carrier must retain these records for a minimum of one calendar year, and failure to do so is a class 3 civil infraction against the carrier for each record that is missing or fails to include all of the information described in rules adopted under subsection (4) of this section.

(3) Limousine carriers and limousine chauffeurs operating as an independent business must list a telephone or pager number that is used to prearrange the carrier's services for any customer carried for compensation.

(4) The department shall adopt rules specifying the content and retention schedule of the records required for compliance with subsection (2) of this section.

(5) The failure of a chauffeur who is operating a limousine to immediately provide, on demand by an enforcement officer, written or electronic records required by the department substantiating the prearrangement of the carrier's services for any customer carried for compensation, except for limousines meeting the requirements of the exception for stand-hail limousines described in subsection (1) of this section, is a class 2 civil infraction and is subject to monetary penalties under RCW 7.80.120. It is a class 1 civil infraction for a repeat offense under this subsection during the same calendar year.

(6) The department shall define by rule conditions under which a chauffeur is considered to be operating a limousine, including when the limousine is parked in a designated passenger load zone. [2011 c 374 § 2; 1996 c 87 § 5.]

Effective date—2011 c 374 §§ 1-12: See note following RCW 46.72A.010.

Report by internal work group on issuance of chauffeur licenses—2011 c 374: See note following RCW 46.72A.090.

46.72A.030 Regulation—Inspection—Fees—Penalties. (*Effective January 1, 2012.*) (1) The department, in conjunction with the Washington state patrol, shall regulate limousine carriers with respect to entry, safety of equipment, chauffeur qualifications, and operations. The department shall adopt rules and require such reports as are necessary to carry out this chapter. The department may develop penalties for failure to comply with this section.

(2) In addition, a port district in a county with a population of one million or more may regulate limousine carriers with respect to entry, safety of equipment, chauffeur qualifications, and operations. The county in which the port district is located may adopt ordinances and rules to assist the port

district in enforcement of limousine regulations only at port facilities. In no event may this be construed to grant the county the authority to regulate limousines within its jurisdiction. The port district may not set limousine rates, but the limousine carriers shall file their rates and schedules with the port district if requested.

(3) The department, a port district in a county with a population of at least one million, or a county in which the port district is located may enter into cooperative agreements for the joint regulation of limousines.

(4) The department and a city with a population of five hundred thousand or more may enter into cooperative agreements as provided in RCW 46.72A.150, subject to the limitations set forth in RCW 46.72A.130.

(5) The Washington state patrol shall annually conduct a vehicle inspection of each limousine licensed under this chapter, except when a port district, or a city with a population of five hundred thousand or more, enforces limousine carrier regulations under subsection (2) or (4) of this section, that port district or county in which the port district is located, or a city with a population of five hundred thousand or more, may conduct the annual limousine vehicle inspection and random limousine vehicle inspections in conjunction with limousine regulation enforcement activities, provided that the inspection criteria and fees are substantially the same regardless of the authority conducting the inspection. Random limousine vehicle inspections may not be conducted while the limousine contains customers. The state patrol, the city, or the port district conducting the annual limousine vehicle inspection may impose an annual vehicle inspection fee and reinspection fee. A carrier must pay a reinspection fee if a limousine fails inspection for compliance with vehicle standards and is reinspected. If the limousine passes the first reinspection within thirty days of failing the original inspection, all of the reinspection fee must be refunded to the carrier. However, refunds are not available for subsequent reinspections. While a limousine is licensed by the department for commercial limousine use, failure to comply with vehicle inspection standards, established by the department by rule, is a class 3 civil infraction against the carrier, with monetary penalties against the carrier as specified in RCW 7.80.120, for each violation of a safety requirement. It is a class 4 civil infraction for each violation of other vehicle standards, with monetary penalties against the carrier as specified in RCW 7.80.120, and the limousine vehicle certificate must be summarily suspended until safety violations of vehicle standards are corrected and the limousine is reinspected. [2011 c 374 § 3; 1996 c 87 § 6.]

Effective date—2011 c 374 §§ 1-12: See note following RCW 46.72A.010.

Report by internal work group on issuance of chauffeur licenses—2011 c 374: See note following RCW 46.72A.090.

46.72A.040 State preemption—Exceptions. (*Effective January 1, 2012.*) Except when a port district regulates limousine carriers under RCW 46.72A.030 or a city with a population of five hundred thousand or more is authorized under RCW 46.72A.150 to enforce state laws or rules applicable to limousine carriers, limousines, and chauffeurs, subject to the limitations set forth in RCW 46.72A.150, the state of Washington fully occupies and preempts the entire field of

regulation over limousine carriers as regulated by this chapter. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to limousine carriers that are consistent with this chapter. [2011 c 374 § 4; 1996 c 87 § 7.]

Effective date—2011 c 374 §§ 1-12: See note following RCW 46.72A.010.

Report by internal work group on issuance of chauffeur licenses—2011 c 374: See note following RCW 46.72A.090.

46.72A.050 Registration—Carrier license, vehicle certificates required—Rules—Penalty. (*Effective January 1, 2012.*) (1) No limousine carrier may operate a limousine upon the highways of this state without first being properly registered as a business in Washington and having been issued a unified business identifier.

(2) In addition, a limousine carrier shall obtain from the department a limousine carrier license for the business and a limousine vehicle certificate for each limousine operated by the carrier. The limousine carrier license and limousine vehicle certificates must be renewed through the department annually or as may be required by the department. The department shall establish by rule the procedure for obtaining, and the fees for, the limousine carrier license and limousine vehicle certificate. It is a class 1 civil infraction, with monetary penalties against the carrier as specified in RCW 7.80.120, for each day that a limousine is operated without a valid limousine carrier license or valid limousine vehicle certificate required under this subsection. [2011 c 374 § 5; 1996 c 87 § 8.]

Effective date—2011 c 374 §§ 1-12: See note following RCW 46.72A.010.

Report by internal work group on issuance of chauffeur licenses—2011 c 374: See note following RCW 46.72A.090.

46.72A.053 Certificate suspension or revocation—Failure to pay industrial insurance premiums—Rules—Cooperative agreements. (*Effective January 1, 2012.*) (1) A business license and vehicle certificate issued pursuant to RCW 46.72A.050 must be suspended or revoked and must not be renewed in the event of failure to pay the mandatory for hire vehicle operator industrial insurance premium as charged by the department of labor and industries under RCW 51.12.183 and 51.16.240.

(2)(a) A limousine and its chauffeur must have evidence of payment in good standing with the department of labor and industries of the for hire vehicle operator industrial insurance premium, whenever the limousine is operated on public streets and highways for compensation.

(b) Failure to produce evidence of payment of the for hire vehicle insurance premium upon demand by a law enforcement officer or other government agent acting under the authority of this chapter is a civil infraction punishable by a fine of not more than two hundred fifty dollars per infraction separately upon both the limousine vehicle owner and the limousine chauffeur if they are not one and the same.

(3) Business license and vehicle certificate suspension or revocation and the administration thereof for failure to pay the mandatory industrial insurance premium must be at the direction and expense of the department of labor and industries.

(4) The department of labor and industries and the department of licensing may adopt rules and enter into cooperative agreements to implement this section. [2011 c 190 § 6.]

Effective date—2011 c 190: See note following RCW 51.12.180.

46.72A.060 Insurance—Amount—Penalty. (Effective January 1, 2012.) (1) The department shall require limousine carriers to obtain and continue in effect, liability and property damage insurance from a company licensed to sell liability insurance in this state for each limousine used to transport persons for compensation.

(2) The department shall fix by rule coverages and limits, and prohibit provisions that limit coverage, for the insurance policy or policies, giving consideration to the character and amount of traffic, the number of persons affected, and the degree of danger that the proposed operation involves. The limousine carrier must maintain the liability and property damage insurance in force on each limousine while licensed by the department.

(3) Failure to file and maintain in effect the insurance required under this section is a gross misdemeanor and the limousine vehicle certificate must be summarily suspended. It is a class 1 civil infraction, with monetary penalties against the carrier as specified in RCW 7.80.120, for each day that a carrier operates a limousine with a summarily suspended limousine vehicle certificate. [2011 c 374 § 6; 2003 c 53 § 251; 1996 c 87 § 9.]

Effective date—2011 c 374 §§ 1-12: See note following RCW 46.72A.010.

Report by internal work group on issuance of chauffeur licenses—2011 c 374: See note following RCW 46.72A.090.

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

46.72A.080 Advertising—Penalties. (Effective January 1, 2012.) (1) No limousine carrier may advertise without listing the carrier's unified business identifier issued by the department in the advertisement and specifying the type of service offered as provided in RCW 46.04.274. No limousine carrier may advertise or hold itself out to the public as providing taxicab transportation services.

(2) All advertising, contracts, correspondence, cards, signs, posters, papers, and documents that show a limousine carrier's name or address shall list the carrier's unified business identifier and the type of service offered. The alphabetized listing of limousine carriers appearing in the advertising sections of telephone books or other directories and all advertising that shows the carrier's name or address must show the carrier's current unified business identifier.

(3) Advertising in the alphabetical listing in a telephone directory need not contain the carrier's certified business identifier.

(4) It is a violation, subject to a fine of up to five thousand dollars per violation, for a person to (a) falsify a unified business identifier or use a false or inaccurate unified business identifier; (b) fail to specify the type of service offered; (c) advertise or otherwise hold itself out to the public as providing taxicab transportation services in connection with a solicitation or identification as an authorized limousine carrier; or (d) conduct commercial limousine business without a

valid limousine carrier license or valid limousine vehicle certificate as required under this chapter, unless licensed as a charter party carrier under chapter 81.70 RCW.

(5) If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation.

(6) In deciding the amount of penalty to be imposed per violation, the department shall consider the following factors:

(a) The carrier's willingness to comply with the department's rules under this chapter; and

(b) The carrier's history with respect to compliance with this section.

(7) It is a class 1 civil infraction, with monetary penalties against the chauffeur as specified in RCW 7.80.120, for a chauffeur to:

(a) Solicit or assign customers directly or through a third party for immediate, nonprearranged limousine service pick up as described in RCW 46.72A.020(1); or

(b) Offer payment to a third party to solicit customers for limousine service pick up without current copies of a written contract regarding such services on file at the third party's business. Copies of the current written contract must be stored and made available on both the third party's and limousine carrier's business premises. Limousine vehicles engaged in the services detailed in the contract must carry a certificate verifying existence of a current contract between the parties. The certificate must contain a general description of the agreement, including initial and expiration dates. A written contract may not allow for immediate, nonprearranged limousine service pick up.

(8) It is a class 1 civil infraction, with monetary penalties against the individual as specified in RCW 7.80.120, for an individual to:

(a) Accept payment to solicit or assign customers on the behalf of a chauffeur for immediate, nonprearranged limousine service pick up as described in RCW 46.72A.020(1); or

(b) Accept payment to solicit customers for limousine service pick up without current copies of a written contract regarding such services on file at the third party's business. Copies of the current written contract must be stored and made available on the third party's business premises and in any limousine engaged in the services detailed in the contract. A written contract may not allow for immediate, nonprearranged limousine service pick up. [2011 c 374 § 7; 1997 c 193 § 1; 1996 c 87 § 11.]

Effective date—2011 c 374 §§ 1-12: See note following RCW 46.72A.010.

Report by internal work group on issuance of chauffeur licenses—2011 c 374: See note following RCW 46.72A.090.

46.72A.090 Chauffeurs—Criteria for, physical exams. (Effective January 1, 2012.) (1) The limousine carrier shall, before a chauffeur operates a limousine, provide proof in a form approved by the department to the appropriate regulating authority that each chauffeur hired to operate a limousine meets the following criteria administered or monitored by the department or an authority approved by the department: (a) Is at least twenty-one years of age; (b) holds a valid Washington state driver's license; (c) has successfully completed a training course approved by the department; (d) has successfully passed a written examination which, to the

greatest extent practicable, the department must administer in the applicant's language of preference; (e) has successfully completed a background check performed by the Washington state patrol or a credentialing authority approved by the department that meets standards adopted by rule by the department; (f) has passed an initial test and is participating in a random testing program designed to detect the presence of any controlled substances determined by the department; (g) has a satisfactory driving record that meets moving accident and moving violation conviction standards adopted by rule by the department; and (h) has submitted a medical certificate certifying the individual's fitness as a chauffeur. Upon initial application and every two years thereafter, a chauffeur must file a physician's certification with the limousine carrier validating the individual's fitness to drive a limousine. The department shall determine by rule the scope of the examination and standards for denial based upon the chauffeur's physical examination. The director may require a chauffeur to undergo an additional controlled substance test or physical examination if the chauffeur has failed a controlled substance test or his or her physical fitness has been called into question.

(2) The limousine carrier shall keep on file and make available for inspection all documents required by this section. [2011 c 374 § 8; 1996 c 87 § 12.]

Report by internal work group on issuance of chauffeur licenses—2011 c 374: "The department of licensing shall convene an internal work group regarding the issuance of chauffeur licenses. The department shall provide a report on its recommendations on this issue to the transportation committees of the legislature by November 15, 2012." [2011 c 374 § 13.]

Effective date—2011 c 374 §§ 1-12: See note following RCW 46.72A.010.

46.72A.100 Unprofessional conduct—Sanctions—Chauffeur. (Effective January 1, 2012.) The director may impose any of the sanctions specified in RCW 18.235.110 for unprofessional conduct as described in RCW 18.235.130 or if one of the following is true of a chauffeur hired to drive a limousine, including where such a chauffeur is also the carrier: (1) The person has been convicted of an offense of such a nature as to indicate that he or she is unfit to qualify as a chauffeur; (2) the person is guilty of committing an offense for which mandatory revocation of a driver's license is provided by law; (3) the person has been convicted of vehicular homicide or vehicular assault; (4) the person is intemperate or addicted to narcotics; or (5) the person, while participating in a random testing program designed to detect the presence of any controlled substances determined by the department under RCW 46.72A.090, is found to have taken one of the controlled substances determined by the department without a valid and current prescription from a licensed physician. [2011 c 374 § 9; 2002 c 86 § 295; 1996 c 87 § 13.]

Effective date—2011 c 374 §§ 1-12: See note following RCW 46.72A.010.

Report by internal work group on issuance of chauffeur licenses—2011 c 374: See note following RCW 46.72A.090.

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

46.72A.110 Deposit of fees. The department must transmit all license and vehicle certificate fees received under

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this chapter, together with a proper identifying report, to the state treasurer to be deposited by the state treasurer in the highway safety fund. Appropriations from the highway safety fund will support expenses incurred in carrying out the licensing and regulatory activities of this chapter. [2011 c 298 § 28; 1996 c 87 § 14.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

46.72A.120 Rules and fees. (Effective January 1, 2012.) The department may adopt and enforce such rules, including the setting of fees, as may be consistent with and necessary to carry out this chapter. The fees must approximate the cost of administration. Any fee related to limousine vehicle certificates must not exceed seventy-five dollars. Any fee related to a limousine carrier license for a business must not exceed three hundred fifty dollars. Any fee related to limousine vehicle inspections must not exceed twenty-five dollars. [2011 c 374 § 10; 1996 c 87 § 15.]

Effective date—2011 c 374 §§ 1-12: See note following RCW 46.72A.010.

Report by internal work group on issuance of chauffeur licenses—2011 c 374: See note following RCW 46.72A.090.

46.72A.140 Uniform regulation of business and professions act. (Effective January 1, 2012.) The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter by the department. [2011 c 374 § 11; 2002 c 86 § 296.]

Effective date—2011 c 374 §§ 1-12: See note following RCW 46.72A.010.

Report by internal work group on issuance of chauffeur licenses—2011 c 374: See note following RCW 46.72A.090.

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

46.72A.150 Cooperative agreements with cities with populations of five hundred thousand or more—Enforcement authority, limitations. (Effective January 1, 2012.) (1) The department may enter into cooperative agreements with cities with populations of five hundred thousand or more for the purpose of enforcing state laws or rules applicable to limousine carriers and chauffeurs. This power to enforce includes the right to adopt local limousine laws by city ordinance that are consistent with this chapter and the right to impose monetary penalties by civil infraction as provided in this chapter.

(2) In addition, the following specific authority and limitations to city enforcement must be included:

(a) City enforcement officers may conduct street enforcement activity consistent with this chapter;

(b) City enforcement officers may conduct inspections of limousines to verify compliance with limousine standards adopted by rule by the department and, if the carrier requests, conduct annual limousine vehicle inspections in lieu of an inspection conducted by the Washington state patrol. The city may receive all limousine inspection or reinspection fees for inspections conducted by city enforcement officers;

(c) A city may require that any limousine carrier dispatching a limousine to pick up passengers within the incorporated area of the city to maintain on file with the city insurance documents that meet the requirements adopted by rule by the department. The city may issue civil infractions to carriers and summarily suspend limousine vehicle certificates for failure to maintain on file valid insurance documents with the city.

(3) A cooperative agreement with the department for delegated enforcement must specify the schedule and amount of funds derived from limousine carrier license, limousine vehicle certificate, and chauffeur license fee revenue to be provided to the city to allow the city to provide the agreed upon level of enforcement. In addition, the cooperative agreement must restrict the fee revenue use by a city to the costs of enforcing state laws or rules applicable to limousine carriers and chauffeurs. [2011 c 374 § 12.]

Effective date—2011 c 374 §§ 1-12: See note following RCW 46.72A.010.

Report by internal work group on issuance of chauffeur licenses—2011 c 374: See note following RCW 46.72A.090.

46.72A.160 Limousine carriers account. (Effective July 1, 2012.) (1) The limousine carriers account is created in the state treasury. Notwithstanding any other provision of law, all receipts from each civil infraction and violation imposed by this chapter must be deposited into the account. Moneys in the account must be spent only after appropriation.

(2) Expenditures from the account may be used only for regulation and enforcement under this chapter, including regulation and enforcement through a cooperative agreement as described in RCW 46.72A.150. [2011 c 374 § 14.]

Effective date—2011 c 374 § 14: "Section 14 of this act takes effect July 1, 2012." [2011 c 374 § 16.]

Report by internal work group on issuance of chauffeur licenses—2011 c 374: See note following RCW 46.72A.090.

Chapter 46.82 RCW

DRIVER TRAINING SCHOOLS

Sections

46.82.440	Military training or experience.
46.82.450	Administration of knowledge and driving portions of driver licensing examination—Rules—Department oversight authority.

46.82.440 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 19.]

46.82.450 Administration of knowledge and driving portions of driver licensing examination—Rules—Department oversight authority. (1) Driver training schools may administer the portions of the driver licensing examination that test the applicant’s knowledge of traffic laws and ability to safely operate a motor vehicle as authorized under RCW 46.20.120(6).

(2) The director shall adopt rules to regulate the administration of the knowledge and driving portions of the driver licensing examination. The rules must include, but are not limited to, the following provisions:

(a) Limitations or requirements that determine which driver training schools may administer the knowledge portion of the examination;

(b) Limitations or requirements that determine which driver training schools may administer the driving portion of the examination;

(c) Requirements for the content and method of conducting the examinations to ensure consistency with industry practices;

(d) Requirements for recordkeeping;

(e) A requirement that all driver training school employees conducting driver licensing examinations meet the same qualifications and education and training standards as department employees who conduct such examinations, to the extent necessary to conduct the written and driving skills portions of the examinations;

(f) Requirements related to whether a driver training school staff member may provide both driver training instruction and the driver licensing examination to any one student;

(g) Requirements for retesting and expiring examination results;

(h) Requirements for the department to monitor outcomes for applicants who take a driver licensing examination through a driver training school and to make the outcomes available to the public;

(i) Requirements for annual auditing, which must include the collection of current information regarding insurance, curriculums, instructors’ names and licenses, and a selection of random student files to review for accuracy; and

(j) Sanctions for violations of the rules adopted under this section.

(3) Before a driver training school may provide a portion of the driver licensing examination, it must enter into an agreement with the department that, at a minimum, contains provisions that:

(a) Allow the department to conduct random examinations, inspections, and audits without prior notice;

(b) Allow the department to conduct on-site inspections at least annually;

(c) Allow the department to test, at least annually, a random sample of the drivers approved by the driver training school for licensure and to cancel any driver’s license that may have been issued to any driver selected for testing who refuses to be tested; and

(d) Reserve to the department the right to take prompt and appropriate action against a driver training school that fails to comply with state or federal standards for a driver licensing examination or to comply with any terms of the agreement. [2011 c 370 § 6.]

Inclusion of stakeholder groups in communications to facilitate transition of driver licensing examination administration—2011 c 370: "In communications facilitating the transition to driver training schools and school districts administering portions of the driver licensing examination, the department of licensing shall include at least one representative from each stakeholder group, including the superintendent of public instruction, driver training schools, the unions representing licensing services represen-

tatives, and the Washington state school directors' association." [2011 c 370 § 7.]

Intent—2011 c 370: See note following RCW 28A.220.030.

Chapter 46.83 RCW TRAFFIC SCHOOLS

Sections

- 46.83.070 Use of fees collected in excess of school costs—Limitations.
46.83.080 Prohibition on school fee in excess of penalty for unscheduled traffic infraction.
46.83.090 Bicycle and pedestrian curriculum requirement.

46.83.070 Use of fees collected in excess of school costs—Limitations. (1) A traffic school established by a city, town, or county under this chapter that collects fees for the cost of attending the traffic school may use any fees collected that are in excess of the costs of the traffic school for the following activities:

- (a) Safe driver education materials and programs;
- (b) Safe driver education promotions and advertising; or
- (c) Costs associated with the training of law enforcement officers.

(2) This section does not authorize a city, town, or county to increase or impose new fees for traffic schools solely for the uses authorized in subsection (1) of this section.

(3) This section is not intended, and may not be construed, to reduce, increase, or otherwise impact funding for judicial programs, functions, or services. [2011 c 197 § 1.]

46.83.080 Prohibition on school fee in excess of penalty for unscheduled traffic infraction. A traffic school established by a city, town, or county under this chapter that collects fees for the cost of attending the traffic school may not charge a fee in excess of the penalty for an unscheduled traffic infraction established by the supreme court pursuant to RCW 46.63.110. For the purposes of this section, the penalty includes the base penalty and all assessments and other costs that are required by statute or rule to be added to the base penalty. [2011 c 197 § 2.]

46.83.090 Bicycle and pedestrian curriculum requirement. Any jurisdiction conducting a traffic school or traffic safety course in connection with a condition of a deferral, sentence, or penalty for a traffic infraction or traffic-related criminal offense listed under RCW 46.63.020 shall include, as part of its curriculum, the curriculum for driving safely among bicyclists and pedestrians that has been approved by the department of licensing for driver training schools. This curriculum requirement does not require that more than thirty minutes be devoted to the bicycle and pedestrian curriculum. [2011 c 17 § 2.]

Finding—2011 c 17: "The legislature finds that a number of cities and counties in the state of Washington conduct traffic schools or traffic safety courses for persons cited for traffic infractions or traffic-related criminal offenses as a condition of a deferral, sentence, or penalty. The legislature recognizes that since driver education programs have only recently been required to provide information about how to drive safely among bicyclists and pedestrians, many licensed drivers do not have knowledge about such safe driving practices. In order to increase such knowledge and to avoid unnecessary injuries, fatalities, and conflicts, the legislature believes that it is appropriate to include the bicycle and pedestrian curriculum approved by the department of licensing for driver training schools as part of the curriculum

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of such traffic schools and traffic safety courses. Curriculum materials, which are donated by bicycle organizations to the department of licensing without state expense, are available from the department of licensing and are also available electronically on the department's web site." [2011 c 17 § 1.]

Chapter 46.85 RCW RECIPROCAL OR PROPORTIONAL REGISTRATION OF VEHICLES

Sections

- 46.85.100 Agreements to be written, filed, and available for distribution.

46.85.100 Agreements to be written, filed, and available for distribution. All agreements, arrangements, or declarations or amendments thereto shall be in writing and shall be filed with the department. Upon becoming effective, they shall supersede the provisions of RCW 46.16A.160, chapter 46.87 RCW, or this chapter to the extent that they are inconsistent therewith. The department shall provide copies for public distribution upon request. [2011 c 171 § 94; 1987 c 244 § 13; 1982 c 227 § 22; 1967 c 32 § 114; 1963 c 106 § 10.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

Chapter 46.87 RCW PROPORTIONAL REGISTRATION

Sections

- 46.87.010 Applicability—Implementation.
46.87.023 Rental car businesses.
46.87.080 Cab cards, validation tabs, special license plates—Design, procedures—Issuance, refusal, revocation.
46.87.140 Application—Filing, contents—Fees and taxes—Assessments, due date.
46.87.230 Responsibility for unlawful acts or omissions.
46.87.294 Refusal under federal prohibition, placement of out-of-service order.
46.87.296 Suspension, revocation under federal prohibition—Placement of out-of-service order.

46.87.010 Applicability—Implementation. This chapter applies to proportional registration and reciprocity granted under the provisions of the International Registration Plan (IRP). This chapter shall become effective and be implemented beginning with the 1988 registration year.

(1) Provisions and terms of the IRP prevail unless given a different meaning in chapter 46.04 RCW, this chapter, or in rules adopted under the authority of this chapter.

(2) The director may adopt and enforce rules deemed necessary to implement and administer this chapter.

(3) Owners having a fleet of apportionable vehicles operating in two or more IRP member jurisdictions may elect to proportionally register the vehicles of the fleet under the provisions of the IRP and this chapter in lieu of full or temporary registration as provided for in chapter 46.16A RCW.

(4) If a due date or an expiration date established under authority of this chapter falls on a Saturday, Sunday, or a state legal holiday, such period is automatically extended through the end of the next business day. [2011 c 171 § 95; 2010 c 161 § 1140; 2005 c 194 § 1; 1987 c 244 § 15; 1986 c 18 § 22; 1985 c 380 § 1.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

46.87.023 Rental car businesses. (1) Rental car businesses must register with the department of licensing. This registration must be renewed annually by the rental car business.

(2) Rental cars must be titled and registered under the provisions of chapters 46.12 and 46.16A RCW. The vehicle must be identified at the time of application with the rental car company business number issued by the department.

(3) Use of rental cars is restricted to the rental customer unless otherwise provided by rule.

(4) The department may suspend or cancel the exemptions, benefits, or privileges granted under this section to a rental car business that violates the laws of this state relating to the operation or registration of vehicles or rules lawfully adopted thereunder. The department may initiate and conduct audits, investigations, and enforcement actions as may be reasonably necessary for administering this section.

(5) The department shall adopt such rules as may be necessary to administer and enforce the provisions of this section. [2011 c 171 § 96; 1994 c 227 § 2; 1992 c 194 § 7.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

46.87.080 Cab cards, validation tabs, special license plates—Design, procedures—Issuance, refusal, revocation. (1) Upon making satisfactory application and payment of applicable fees and taxes for proportional registration under this chapter, the department shall issue a cab card and validation tab for each vehicle, and to vehicles of Washington-based fleets, two distinctive apportionable license plates for each motor vehicle. License plates shall be displayed on vehicles as required by RCW 46.16A.200(5). The number and plate shall be of a design, size, and color determined by the department. The plates shall be treated with reflectorized material and clearly marked with the words "WASHINGTON" and "APPORTIONED," both words to appear in full and without abbreviation.

(2) The cab card serves as the certificate of registration for a proportionally registered vehicle. The face of the cab card shall contain the name and address of the registrant as contained in the records of the department, the license plate number assigned to the vehicle by the base jurisdiction, the vehicle identification number, and such other description of the vehicle and data as the department may require. The cab card shall be signed by the registrant, or a designated person if the registrant is a business firm, and shall at all times be carried in or on the vehicle to which it was issued.

(3) The apportioned license plates are not transferrable from vehicle to vehicle unless otherwise determined by rule and shall be used only on the vehicle to which they are assigned by the department for as long as they are legible or until such time as the department requires them to be removed and returned to the department.

(4) Distinctive validation tab(s) of a design, size, and color determined by the department shall be affixed to the

apportioned license plate(s) as prescribed by the department to indicate the month, if necessary, and year for which the vehicle is registered.

(5) Renewals shall be effected by the issuance and display of such tab(s) after making satisfactory application and payment of applicable fees and taxes.

(6) Fleet vehicles so registered and identified shall be deemed to be fully licensed and registered in this state for any type of movement or operation. However, in those instances in which a grant of authority is required for interstate or intrastate movement or operation, no such vehicle may be operated in interstate or intrastate commerce in this state unless the owner has been granted interstate operating authority in the case of interstate operations or intrastate operating authority by the Washington utility and transportation commission in the case of intrastate operations and unless the vehicle is being operated in conformity with that authority.

(7) The department may issue temporary authorization permits (TAPs) to qualifying operators for the operation of vehicles pending issuance of license identification. A fee of one dollar plus a one dollar filing fee shall be collected for each permit issued. The permit fee shall be deposited in the motor vehicle fund, and the filing fee shall be deposited in the highway safety fund. The department may adopt rules for use and issuance of the permits.

(8) The department may refuse to issue any license or permit authorized by subsection (1) or (7) of this section to any person: (a) Who formerly held any type of license or permit issued by the department pursuant to chapter 46.16A, 46.85, 46.87, 82.36, or 82.38 RCW that has been revoked for cause, which cause has not been removed; or (b) who is a subterfuge for the real party in interest whose license or permit issued by the department pursuant to chapter 46.16A, 46.85, 46.87, 82.36, or 82.38 RCW and has been revoked for cause, which cause has not been removed; or (c) who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a license or permit issued by the department pursuant to chapter 46.16A, 46.85, 46.87, 82.36, or 82.38 RCW which has been revoked for cause, which cause has not been removed; or (d) who has an unsatisfied debt to the state assessed under either chapter 46.16A, 46.85, 46.87, 82.36, 82.38, or 82.44 RCW.

(9) The department may revoke the license or permit authorized by subsection (1) or (7) of this section issued to any person for any of the grounds constituting cause for denial of licenses or permits set forth in subsection (8) of this section.

(10) Before such refusal or revocation under subsection (8) or (9) of this section, the department shall grant the applicant a hearing and at least ten days written notice of the time and place of the hearing. [2011 c 171 § 97; 2005 c 194 § 6; 1998 c 115 § 1; 1993 c 307 § 14; 1987 c 244 § 23; 1985 c 380 § 8.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

46.87.140 Application—Filing, contents—Fees and taxes—Assessments, due date. (1) Any owner engaged in interstate operations of one or more fleets of apportionable vehicles may, in lieu of registration of the vehicles under

chapter 46.16A RCW, register and license the vehicles of each fleet under this chapter by filing a proportional registration application for each fleet with the department. The application shall contain the following information and such other information pertinent to vehicle registration as the department may require:

(a) A description and identification of each vehicle of the fleet.

(b) The member jurisdictions in which registration is desired and such other information as member jurisdictions require.

(c) An original or renewal application shall also be accompanied by a mileage schedule for each fleet.

(d) The USDOT number issued to the registrant and the USDOT number of the motor carrier responsible for the safety of the vehicle, if different.

(e) A completed Motor Carrier Identification Report (MCS-150) at the time of fleet renewal or at the time of vehicle registration, if required by the department.

(f) The Taxpayer Identification Number of the registrant and the motor carrier responsible for the safety of the vehicle, if different.

(2) Each application shall, at the time and in the manner required by the department, be supported by payment of a fee computed as follows:

(a) Divide the in-jurisdiction miles by the total miles and carry the answer to the nearest thousandth of a percent (three places beyond the decimal, e.g. 10.543%). This factor is known as the prorate percentage.

(b) Determine the total proratable fees and taxes required for each vehicle in the fleet for which registration is requested, based on the regular annual fees and taxes or applicable fees and taxes for the unexpired portion of the registration year under the laws of each jurisdiction for which fees or taxes are to be calculated.

Applicable fees and taxes for vehicles of Washington-based fleets are those prescribed under RCW 46.17.350(1)(c), 46.17.355, and 82.38.075, as applicable. If, during the registration period, the lessor of an apportioned vehicle changes and the vehicle remains in the fleet of the registrant, the department shall only charge those fees prescribed for the issuance of new apportioned license plates, validation tabs, and cab card.

(c) Multiply the total, proratable fees or taxes for each motor vehicle by the prorate percentage applicable to the desired jurisdiction and round the results to the nearest cent.

(d) Add the total fees and taxes determined in (c) of this subsection for each vehicle to the nonproratable fees required under the laws of the jurisdiction for which fees are being calculated. Nonproratable fees required for vehicles of Washington-based fleets are the administrative fee required by RCW 82.38.075, if applicable, and the vehicle transaction fee pursuant to the provisions of RCW 46.87.130.

(e) The amount due and payable for the application is the sum of the fees and taxes calculated for each member jurisdiction in which registration of the fleet is desired.

(3) All assessments for proportional registration fees are due and payable in United States funds on the date presented or mailed to the registrant at the address listed in the proportional registration records of the department. The registrant may petition for reassessment of the fees or taxes due under

this section within thirty days of the date of original service as provided for in this chapter. [2011 c 171 § 98; 2010 c 161 § 1143; 2005 c 194 § 9; 2003 c 85 § 2; 1997 c 183 § 5; 1991 c 339 § 10; 1990 c 42 § 114; 1987 c 244 § 27.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Additional notes found at www.leg.wa.gov

46.87.230 Responsibility for unlawful acts or omissions. Whenever an act or omission is declared to be unlawful under chapter 46.12, 46.16A, or 46.44 RCW or this chapter, and if the operator of the vehicle is not the owner or lessee of the vehicle but is so operating or moving the vehicle with the express or implied permission of the owner or lessee, then the operator and the owner or lessee are both subject to this chapter, with the primary responsibility to be that of the owner or lessee.

If the person operating the vehicle at the time of the unlawful act or omission is not the owner or the lessee of the vehicle, that person is fully authorized to accept the citation or notice of infraction and execute the promise to appear on behalf of the owner or lessee. [2011 c 171 § 99; 1987 c 244 § 36.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

46.87.294 Refusal under federal prohibition, placement of out-of-service order. The department shall refuse to register a vehicle under this chapter if the registrant or motor carrier responsible for the safety of the vehicle has been prohibited under federal law from operating by the federal motor carrier safety administration. The department shall not register a vehicle if the Washington state patrol has placed an out-of-service order on the vehicle's department of transportation number, as defined in RCW 46.16A.010. [2011 c 171 § 100; 2007 c 419 § 15; 2003 c 85 § 3.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—Short title—2007 c 419: See notes following RCW 46.16A.010.

46.87.296 Suspension, revocation under federal prohibition—Placement of out-of-service order. The department shall suspend or revoke the registration of a vehicle registered under this chapter if the registrant or motor carrier responsible for the safety of the vehicle has been prohibited under federal law from operating by the federal motor carrier safety administration. The department shall not register a vehicle if the Washington state patrol has placed an out-of-service order on the vehicle's department of transportation number, as defined in RCW 46.16A.010. [2011 c 171 § 101; 2007 c 419 § 16; 2003 c 85 § 4.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—Short title—2007 c 419: See notes following RCW 46.16A.010.

Chapter 46.93 RCW
MOTORSPORTS VEHICLES—
DEALER AND MANUFACTURER FRANCHISES

Sections

46.93.020 Definitions.

46.93.020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Department" means the department of licensing.

(2) "Designated successor" means:

(a) The spouse, biological or adopted child, grandchild, parent, brother, or sister of the owner of a new motorsports vehicle dealership who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motorsports vehicle dealership under the terms of the owner's will or similar document, and if there is no such will or similar document, then under applicable intestate laws;

(b) A qualified person experienced in the business of a new motorsports vehicle dealer who has been nominated by the owner of a new motorsports vehicle dealership as the successor in a written, notarized, and witnessed instrument submitted to the manufacturer; or

(c) In the case of an incapacitated owner of a new motorsports vehicle dealership, the person who has been appointed by a court as the legal representative of the incapacitated owner's property.

(3) "Director" means the director of the department of licensing.

(4) "Franchise" means one or more agreements, whether oral or written, between a manufacturer and a new motorsports vehicle dealer, under which the new motorsports vehicle dealer is authorized to sell, service, and repair new motorsports vehicles, parts, and accessories under a common name, trade name, trademark, or service mark of the manufacturer.

"Franchise" includes an oral or written contract and includes a dealer agreement, either expressed or implied, between a manufacturer and a new motorsports vehicle dealer that purports to fix the legal rights and liabilities between the parties and under which (a) the dealer is granted the right to purchase and resell motorsports vehicles manufactured, distributed, or imported by the manufacturer; (b) the dealer's business is associated with the trademark, trade name, commercial symbol, or advertisement designating the franchisor or the products distributed by the manufacturer; and (c) the dealer's business relies on the manufacturer for a continued supply of motorsports vehicles, parts, and accessories.

(5) "Good faith" means honesty in fact and fair dealing in the trade as defined and interpreted in RCW 62A.2-103.

(6) "Manufacturer" means a person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused motorsports vehicles or remanufactures motorsports vehicles in whole or in part and further includes the terms:

(a) "Distributor," which means a person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes new and

unused motorsports vehicles to vehicle dealers or who maintains factory representatives.

(b) "Factory branch," which means a branch office maintained by a manufacturer for the purpose of selling or offering for sale, motorsports vehicles to a distributor, wholesaler, or vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives, and further includes a sales promotion organization, whether a person, firm, or corporation, that is engaged in promoting the sale of new and unused motorsports vehicles in this state of a particular brand or make to vehicle dealers.

(c) "Factory representative," which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of their motorsports vehicles or for supervising or contracting with their dealers or prospective dealers.

(7) "Motorsports vehicle" means a motorcycle as defined in RCW 46.04.330; a moped as defined in RCW 46.04.304; a motor-driven cycle as defined in RCW 46.04.332; a personal watercraft as defined in RCW 79A.60.010; a snowmobile as defined in RCW 46.04.546; a four-wheel, all-terrain vehicle; and any other motorsports vehicle defined under RCW 46.93.200 by the department that is otherwise not subject to chapter 46.96 RCW.

(8) "New motorsports vehicle dealer" or "dealer" means a person engaged in the business of buying, selling, exchanging, or otherwise dealing in new motorsports vehicles or new and used motorsports vehicles at an established place of business under a franchise, sales and service agreement, or any other contract with a manufacturer of any one or more types of new motorsports vehicles. The term does not include a miscellaneous vehicle dealer as defined in RCW 46.70.011.

(9) "Owner" means a person holding an ownership interest in the business entity operating as a new motorsports vehicle dealer and who is the designated dealer in the new motorsports vehicle franchise agreement.

(10) "Person" means a natural person, partnership, stock company, corporation, trust, agency, or any other legal entity, as well as any individual officers, directors, or other persons in active control of the activities of the entity.

(11) "Place of business" means a permanent, enclosed commercial building, situated within this state, and the real property on which it is located, at which the business of a motorsports vehicle dealer, including the display and repair of motorsports vehicles, may be lawfully conducted in accordance with the terms of all applicable laws and at which the public may contact the motorsports vehicle dealer and employees at all reasonable times.

(12) "Relevant market area" is defined as follows:

(a) If the population in the county in which the existing, proposed new, or relocated dealership is located or is to be located is four hundred thousand or more, the relevant market area is the geographic area within the radius of ten miles around the existing, proposed new, or relocated place of business for the dealership;

(b) If the population in the county in which the existing, proposed new, or relocated dealership is to be located is two hundred thousand or more and less than four hundred thousand, the relevant market area is the geographic area within a radius of twelve miles around the existing, proposed new, or relocated place of business for the dealership;

(c) If the population in the county in which the existing, proposed new, or relocated dealership is to be located is less than two hundred thousand, the relevant market area is the geographic area within a radius of twenty miles around the existing, proposed new, or relocated place of business for the dealership;

(d) In determining population for this definition, the most recent census by the United States Bureau of Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, will be accumulated for all census tracts either wholly or partially within the relevant market area. [2011 c 171 § 102; 2003 c 354 § 2.]

Reviser’s note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Title 47

PUBLIC HIGHWAYS AND TRANSPORTATION

Chapters

- 47.01 Department of transportation.
- 47.04 General provisions.
- 47.06B Coordinating special needs transportation.
- 47.10 Highway construction bonds.
- 47.12 Acquisition and disposition of state highway property.
- 47.17 State highway routes.
- 47.26 Development in urban areas—Urban arterials.
- 47.28 Construction and maintenance of highways.
- 47.29 Transportation innovative partnerships.
- 47.39 Scenic and recreational highway act of 1967.
- 47.52 Limited access facilities.
- 47.56 State toll bridges, tunnels, and ferries.
- 47.60 Puget sound ferry and toll bridge system.
- 47.64 Marine employees—Public employment relations.
- 47.66 Multimodal transportation programs.
- 47.68 Aeronautics.
- 47.76 Rail freight service.

Chapter 47.01 RCW

DEPARTMENT OF TRANSPORTATION

Sections

- 47.01.380 State route No. 520 improvements—Exceptions.
- 47.01.440 Adoption of statewide goals to reduce annual per capita vehicle miles traveled by 2050—Department’s duties—Reports to the legislature.

47.01.380 State route No. 520 improvements—Exceptions. The department shall not commence construction on any part of the state route number 520 bridge replacement and HOV project until a record of decision has been reached providing reasonable assurance that project impacts will be avoided, minimized, or mitigated as much as practicable to protect against further adverse impacts on neighborhood environmental quality as a result of repairs and improvements made to the state route number 520 bridge and its connecting roadways, and that any such impacts will be

addressed through engineering design choices, mitigation measures, or a combination of both. The requirements of this section shall not apply to off-site pontoon construction supporting the state route number 520 bridge replacement and HOV project. The requirements of this section shall not apply during the 2009-2011 and 2011-2013 fiscal biennia. [2011 c 367 § 708; 2009 c 470 § 705; 2006 c 311 § 26.]

Effective date—2011 c 367: See note following RCW 47.29.170.

Effective date—2009 c 470: See note following RCW 46.68.170.

Findings—2006 c 311: See note following RCW 36.120.020.

47.01.440 Adoption of statewide goals to reduce annual per capita vehicle miles traveled by 2050—Department’s duties—Reports to the legislature. To support the implementation of RCW 47.04.280 and 47.01.078(4), the department shall adopt broad statewide goals to reduce annual per capita vehicle miles traveled by 2050 consistent with the stated goals of executive order 07-02. Consistent with these goals, the department shall:

(1) Establish the following benchmarks using a statewide baseline of seventy-five billion vehicle miles traveled less the vehicle miles traveled attributable to vehicles licensed under RCW 46.16A.455 and weighing ten thousand pounds or more, which are exempt from this section:

- (a) Decrease the annual per capita vehicle miles traveled by eighteen percent by 2020;
- (b) Decrease the annual per capita vehicle miles traveled by thirty percent by 2035; and
- (c) Decrease the annual per capita vehicle miles traveled by fifty percent by 2050;

(2) By July 1, 2008, establish and convene a collaborative process to develop a set of tools and best practices to assist state, regional, and local entities in making progress towards the benchmarks established in subsection (1) of this section. The collaborative process must provide an opportunity for public review and comment and must:

(a) Be jointly facilitated by the department, the department of ecology, and the *department of community, trade, and economic development;

(b) Provide for participation from regional transportation planning organizations, the Washington state transit association, the Puget Sound clean air agency, a statewide business organization representing the sale of motor vehicles, at least one major private employer that participates in the commute trip reduction program, and other interested parties, including but not limited to parties representing diverse perspectives on issues relating to growth, development, and transportation;

(c) Identify current strategies to reduce vehicle miles traveled in the state as well as successful strategies in other jurisdictions that may be applicable in the state;

(d) Identify potential new revenue options for local and regional governments to authorize to finance vehicle miles traveled reduction efforts;

(e) Provide for the development of measurement tools that can, with a high level of confidence, measure annual progress toward the benchmarks at the local, regional, and state levels, measure the effects of strategies implemented to reduce vehicle miles traveled and adequately distinguish between common travel purposes, such as moving freight or

commuting to work, and measure trends of vehicle miles traveled per capita on a five-year basis;

(f) Establish a process for the department to periodically evaluate progress toward the vehicle miles traveled benchmarks, measure achieved and projected emissions reductions, and recommend whether the benchmarks should be adjusted to meet the state's overall goals for the reduction of greenhouse gas emissions;

(g) Estimate the projected reductions in greenhouse gas emissions if the benchmarks are achieved, taking into account the expected implementation of existing state and federal mandates for vehicle technology and fuels, as well as expected growth in population and vehicle travel;

(h) Examine access to public transportation for people living in areas with affordable housing to and from employment centers, and make recommendations for steps necessary to ensure that areas with affordable housing are served by adequate levels of public transportation; and

(i) By December 1, 2008, provide a report to the transportation committees of the legislature on the collaborative process and resulting recommended tools and best practices to achieve the reduction in annual per capita vehicle miles traveled goals.

(3) Included in the December 1, 2008, report to the transportation committees of the legislature, the department shall identify strategies to reduce vehicle miles traveled in the state as well as successful strategies in other jurisdictions that may be applicable in the state that recognize the differing urban and rural transportation requirements.

(4) Prior to implementation of the goals in this section, the department, in consultation with the *department of community, trade, and economic development, cities, counties, local economic development organizations, and local and regional chambers of commerce, shall provide a report to the appropriate committees of the legislature on the anticipated impacts of the goals established in this section on the following:

(a) The economic hardship on small businesses as it relates to the ability to hire and retain workers who do not reside in the county in which they are employed;

(b) Impacts on low-income residents;

(c) Impacts on agricultural employers and their employees, especially on the migrant farmworker community;

(d) Impacts on distressed rural counties; and

(e) Impacts in counties with more than fifty percent of the land base of the county in public or tribal lands. [2011 c 171 § 103; 2008 c 14 § 8.]

*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—Intent—Scope of chapter 14, Laws of 2008—Severability—2008 c 14: See RCW 70.235.005, 70.235.900, and 70.235.901.

**Chapter 47.04 RCW
GENERAL PROVISIONS**

Sections

- 47.04.290 Park and ride lot accommodation—Definitions.
- 47.04.295 Park and ride lots—Leases with private entities authorized—Rules.

- 47.04.320 Complete streets grant program—Purpose—Goals—Awards—Report.
- 47.04.325 Complete streets grant program—Account—Solicitation and receipt of gifts.
- 47.04.330 Street projects—Consultation with local jurisdictions—Context sensitive design solutions.
- 47.04.340 Accommodation of private transportation vehicle use of high occupancy vehicle lanes in highway design.

47.04.290 Park and ride lot accommodation—Definitions.

(1) Any local transit agency that has received state funding for a park and ride lot shall make reasonable accommodation for use of that lot by: Auto transportation companies regulated under chapter 81.68 RCW; passenger charter carriers regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department of licensing rules; private, nonprofit transportation providers regulated under chapter 81.66 RCW; and private employer transportation service vehicles, provided that such use does not interfere with the efficiency, reliability, and safety of public transportation operations. The accommodation must be in the form of an agreement between the applicable local transit agency and the private transportation provider. The transit agency may require that the agreement include provisions to recover actual costs and fair market value for the use of the lot and its related facilities and to provide adequate insurance and indemnification of the transit agency, and other reasonable provisions to ensure that the private transportation provider's use does not unduly burden the transit agency. The transit agency may consider benefits to its public transportation system when establishing an amount to charge for the use of the park and ride lot and its related facilities. If the agreement includes provisions to recover actual costs, the private transportation provider is responsible to remit the full actual costs of park and ride lot use to the appropriate transit agency. No accommodation is required, and any agreement may be terminated, if the park and ride lot is at or exceeds ninety percent capacity between the hours of 6:00 a.m. and 4:00 p.m., Monday through Friday for two consecutive months. Additionally, any agreement may be terminated if the private transportation provider violates any policies guiding the terms of use of the park and ride lot. The transit agency may reserve the authority to designate which pick-up and drop-off zones of the park and ride lot may be used by the private transportation provider.

(2) A local transit agency described under subsection (1) of this section may enter into a cooperative agreement with a taxicab company regulated under chapter 81.72 RCW in order to accommodate the taxicab company at the agency's park and ride lot, provided the taxicab company must agree to provide service with reasonable availability, subject to schedule coordination provisions as agreed to by the parties.

(3) For the purposes of this section, "private employer transportation service" means regularly scheduled, fixed-route transportation service that is similarly marked or identified to display the business name or logo on the driver and passenger sides of the vehicle, meets the annual certification requirements of the department, and is offered by an employer for the benefit of its employees.

(4) For the purposes of this section, "private transportation provider" means:

(a) A company regulated under chapter 81.68 RCW; chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department of licensing rules; and chapter 81.66 RCW; and

(b) An entity providing private employer transportation service.

(5)(a) Local authorities are encouraged to establish a process for private transportation providers, described under subsections (1) and (4) of this section, to apply for the use of park and ride facilities.

(b) The process must provide a list of facilities that the local authority determines to be unavailable for use by the private transportation provider and must provide the criteria used to reach that determination.

(c) The application and review processes must be uniform and should provide for an expeditious response by the authority.

(6) The department must convene a stakeholder process that includes interested public and private transportation providers, which must develop standard permit forms, clear explanations of permit rate calculations, and standard indemnification provisions that may be used by all local authorities. [2011 c 379 § 2; 2008 c 257 § 1.]

Conflict with state and federal environmental mitigation requirements—2011 c 379: See note following RCW 46.61.165.

47.04.295 Park and ride lots—Leases with private entities authorized—Rules. (1) The department, or any local transit agency that has received state funding for a park and ride lot, may enter into a lease with private entities allowing them to operate food or beverage retailers, restaurants, grocery and convenience stores, or other private enterprises that are of benefit to the traveling public at park and ride lots owned by the department or local transit agency.

(2) The department or local transit agency must take all necessary action to ensure the most favorable lease rates for the state or local transit agency, whether by bid or other reasonable manner, and to require the lessee to enter into any other contract or agreement to protect the state and its citizens or the local transit agency from commercial harm or other type of harm. Any lease entered into under this section must ensure that the lease payments are at fair market value and comparable to market rates in the area of the park and ride lot. Lease payments must first be applied towards maintenance and operations of the applicable park and ride lot and the remainder must be deposited into the multimodal transportation account created under RCW 47.66.070.

(3) The department must adopt and enforce such reasonable rules that are consistent with and necessary to carry out this section, including a flexible process to prioritize local business interests when entering into lease agreements. [2011 c 378 § 1.]

47.04.320 Complete streets grant program—Purpose—Goals—Awards—Report. (1) The department shall establish a complete streets grant program within the department's highways and local programs division, or its successor. During program development, the department shall include, at a minimum, the department of archaeology and historic preservation, local governments, and other organizations or groups that are interested in the complete streets

[2011 RCW Supp—page 1074]

grant program. The purpose of the grant program is to encourage local governments to adopt urban arterial retrofit street ordinances designed to provide safe access to all users, including bicyclists, pedestrians, motorists, and public transportation users, with the goals of:

(a) Promoting healthy communities by encouraging walking, bicycling, and using public transportation;

(b) Improving safety by designing major arterials to include features such as wider sidewalks, dedicated bicycle facilities, medians, and pedestrian streetscape features, including trees where appropriate;

(c) Protecting the environment and reducing congestion by providing safe alternatives to single-occupancy driving; and

(d) Preserving community character by involving local citizens and stakeholders to participate in planning and design decisions.

(2) For purposes of this section:

(a) "Eligible project" means (i) a local government street retrofit project that includes the addition of, or significant repair to, facilities that provide street access with all users in mind, including pedestrians, bicyclists, and public transportation users; or (ii) a retrofit project on city streets that are part of a state highway that include the addition of, or significant repair to, facilities that provide street access with all users in mind, including pedestrians, bicyclists, and public transportation users.

(b) "Local government" means incorporated cities and towns that have adopted a jurisdiction-wide complete streets ordinance that plans for the needs of all users and is consistent with sound engineering principles.

(c) "Sound engineering principles" means peer-reviewed, context sensitive solutions guides, reports, and publications, consistent with the purposes of this section.

(3) In carrying out the purposes of this section, the department may award funding, subject to the availability of amounts appropriated for this specific purpose, only to eligible projects that are designed consistent with sound engineering principles.

(4) The department must report annually to the transportation committees of the legislature on the status of any grant projects funded by the program created under this section. [2011 c 257 § 2.]

Intent—2011 c 257: "Urban main streets should be designed to provide safe access to all users, including bicyclists, pedestrians, motorists, and public transportation users. Context sensitive design and engineering principles allow for flexible solutions depending on a community's needs, and result in many positive outcomes for cities and towns, including improving the health and safety of a community. It is the intent of the legislature to encourage street designs that safely meet the needs of all users and also protect and preserve a community's environment and character." [2011 c 257 § 1.]

47.04.325 Complete streets grant program—Account—Solicitation and receipt of gifts. (1) The complete streets grant program account is created in the state treasury. Moneys in the account may be spent only after appropriation. Only the department may authorize expenditures from the account. The department may use complete streets grant program funds for city streets, and city streets that are part of a state highway. Expenditures from the account may be used solely for the grants provided under RCW 47.04.320.

(2) The department may solicit and receive gifts, grants, or endowments from private and other sources that are made, in trust or otherwise, for the use and benefit of the purposes of the complete streets grant program as provided in RCW 47.04.320. [2011 c 257 § 3.]

Intent—2011 c 257: See note following RCW 47.04.320.

47.04.330 Street projects—Consultation with local jurisdictions—Context sensitive design solutions. When constructing, reconstructing, or making major improvements to streets described in RCW 47.24.010, the department must, for street projects initially planned or scoped after July 1, 2011:

(1) Consult with local jurisdictions in the design and planning phases. Consultation with local jurisdictions must include public outreach and meetings with interested stakeholders in the predesign phase for the purpose of clarifying community goals and priorities through community design exercises prior to developing any designs or visualizations; and

(2) Consider the needs of all users by applying context sensitive design solutions consistent with peer-reviewed, context sensitive solutions guides, reports, and publications, consistent with the purposes of this section. [2011 c 257 § 4.]

Intent—2011 c 257: See note following RCW 47.04.320.

47.04.340 Accommodation of private transportation vehicle use of high occupancy vehicle lanes in highway design. When designing portions of a highway that are intended to be used as portions reserved for the exclusive or preferential use of public transportation vehicles, state and local jurisdictions shall consider whether the design will safely accommodate private transportation provider vehicles that may be authorized to use the reserved portions under RCW 46.61.165 and 47.52.025 without interfering with the efficiency, reliability, and safety of public transportation operations. [2011 c 379 § 4.]

Conflict with state and federal environmental mitigation requirements—2011 c 379: See note following RCW 46.61.165.

Chapter 47.06B RCW

COORDINATING SPECIAL NEEDS TRANSPORTATION

Sections

- 47.06B.020 Agency council on coordinated transportation—Creation, purpose, membership, staff, meetings *(as amended by 2011 c 60)*. *(Effective January 1, 2012, until June 30, 2012.)*
- 47.06B.020 Agency council on coordinated transportation—Creation, purpose, membership, staff, meetings *(as amended by 2011 1st sp.s. c 15)*. *(Effective until June 30, 2012.)*
- 47.06B.060 Council—Work group—Duties, membership, reports. *(Effective until June 30, 2012.)*
- 47.06B.070 Local coordinating coalitions—Creation, purpose, membership, meetings, staff. *(Effective until June 30, 2012.)*
- 47.06B.901 Repealer. *(Effective January 1, 2012.)*

47.06B.020 Agency council on coordinated transportation—Creation, purpose, membership, staff, meetings *(as amended by 2011 c 60)*. *(Effective January 1, 2012, until June 30, 2012.)* (1) The agency council on coordinated transportation is created. The purpose of the council is to advance and improve accessibility to and coordination of special needs transportation services statewide. The council is composed of fourteen voting members and four nonvoting, legislative members.

(2) The fourteen voting members are the superintendent of public instruction or a designee, the secretary of transportation or a designee, the secretary of the department of social and health services or a designee, and eleven members appointed by the governor as follows:

- (a) One representative from the office of the governor;
- (b) Three persons who are consumers of special needs transportation services, which must include:
 - (i) One person designated by the executive director of the governor’s committee on disability issues and employment; and
 - (ii) One person who is designated by the executive director of the developmental disabilities council;
- (c) One representative from the Washington association of pupil transportation;
- (d) One representative from the Washington state transit association;
- (e) One of the following:
 - (i) A representative from the community transportation association of the Northwest; or
 - (ii) A representative from the community action council association;
- (f) One person who represents regional transportation planning organizations and metropolitan planning organizations;
- (g) One representative of brokers who provide nonemergency, medically necessary trips to persons with special transportation needs under the medicaid program administered by the department of social and health services;
- (h) One representative from the Washington state department of veterans affairs; and
- (i) One representative of the state association of counties.

(3) The four nonvoting members are legislators as follows:

(a) Two members from the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives, including at least one member from the house transportation policy and budget committee or the house appropriations committee; and

(b) Two members from the senate, one from each of the two largest caucuses, appointed by the president of the senate, including at least one member from the senate transportation committee or the senate ways and means committee.

(4) gubernatorial appointees of the council will serve two-year terms. Members may not receive compensation for their service on the council, but will be reimbursed for actual and necessary expenses incurred in performing their duties as members as set forth in RCW 43.03.220.

(5) The council shall vote on an annual basis to elect one of its voting members to serve as chair. The position of chair must rotate among the represented agencies, associations, and interest groups at least every two years. If the position of chair is vacated for any reason, the secretary of transportation or the secretary’s designee shall serve as acting chair until the next regular meeting of the council, at which time the members will elect a chair.

(6) The council shall periodically assess its membership to ensure that there exists a balanced representation of persons with special transportation needs and providers of special transportation needs services. Recommendations for modifying the membership of the council must be included in the council’s biennial report to the legislature as provided in RCW 47.06B.050.

(7) The department of transportation shall provide necessary staff support for the council.

(8) The council may receive gifts, grants, or endowments from public or private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the council and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW ((42.17.740)) 42.17A.560.

(9) The meetings of the council must be open to the public, with the agenda published in advance, and minutes kept and made available to the public. The public notice of the meetings must indicate that accommodations for persons with disabilities will be made available upon request.

(10) All meetings of the council must be held in locations that are readily accessible to public transportation, and must be scheduled for times when public transportation is available.

(11) The council shall make an effort to include presentations by and work sessions including persons with special transportation needs. [2011 c 60 § 45; 2009 c 515 § 4; 2007 c 421 § 2; 1998 c 173 § 2.]

Effective date—2011 c 60: See RCW 42.17A.919.

47.06B.020 Agency council on coordinated transportation—Creation, purpose, membership, staff, meetings *(as amended by 2011 1st sp.s. c 15)*. *(Effective until June 30, 2012.)* (1) The agency council on coordinated transportation is created. The purpose of the council is to advance

and improve accessibility to and coordination of special needs transportation services statewide. The council is composed of fourteen voting members and four nonvoting, legislative members.

(2) The fourteen voting members are the superintendent of public instruction or a designee, the secretary of transportation or a designee, the ~~((secretary of the department of social and health services))~~ director of the health care authority or a designee, and eleven members appointed by the governor as follows:

- (a) One representative from the office of the governor;
 - (b) Three persons who are consumers of special needs transportation services, which must include:
 - (i) One person designated by the executive director of the governor's committee on disability issues and employment; and
 - (ii) One person who is designated by the executive director of the developmental disabilities council;
 - (c) One representative from the Washington association of pupil transportation;
 - (d) One representative from the Washington state transit association;
 - (e) One of the following:
 - (i) A representative from the community transportation association of the Northwest; or
 - (ii) A representative from the community action council association;
 - (f) One person who represents regional transportation planning organizations and metropolitan planning organizations;
 - (g) One representative of brokers who provide nonemergency, medically necessary trips to persons with special transportation needs under the medicaid program administered by the ~~((department of social and health services))~~ health care authority;
 - (h) One representative from the Washington state department of veterans affairs; and
 - (i) One representative of the state association of counties.
- (3) The four nonvoting members are legislators as follows:
- (a) Two members from the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives, including at least one member from the house transportation policy and budget committee or the house appropriations committee; and
 - (b) Two members from the senate, one from each of the two largest caucuses, appointed by the president of the senate, including at least one member from the senate transportation committee or the senate ways and means committee.
- (4) Gubernatorial appointees of the council will serve two-year terms. Members may not receive compensation for their service on the council, but will be reimbursed for actual and necessary expenses incurred in performing their duties as members as set forth in RCW 43.03.220.

(5) The council shall vote on an annual basis to elect one of its voting members to serve as chair. The position of chair must rotate among the represented agencies, associations, and interest groups at least every two years. If the position of chair is vacated for any reason, the secretary of transportation or the secretary's designee shall serve as acting chair until the next regular meeting of the council, at which time the members will elect a chair.

(6) The council shall periodically assess its membership to ensure that there exists a balanced representation of persons with special transportation needs and providers of special transportation needs services. Recommendations for modifying the membership of the council must be included in the council's biennial report to the legislature as provided in RCW 47.06B.050.

(7) The department of transportation shall provide necessary staff support for the council.

(8) The council may receive gifts, grants, or endowments from public or private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the council and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW 42.17A.560.

(9) The meetings of the council must be open to the public, with the agenda published in advance, and minutes kept and made available to the public. The public notice of the meetings must indicate that accommodations for persons with disabilities will be made available upon request.

(10) All meetings of the council must be held in locations that are readily accessible to public transportation, and must be scheduled for times when public transportation is available.

(11) The council shall make an effort to include presentations by and work sessions including persons with special transportation needs. [2011 1st sp.s. c 15 § 73; 2011 c 60 § 45; 2009 c 515 § 4; 2007 c 421 § 2; 1998 c 173 § 2.]

Reviser's note: Section 73, chapter 15, Laws of 2011 1st sp.s. amended section 45, chapter 60, Laws of 2011 without cognizance of its effective date,

January 1, 2012. Chapter 15, Laws of 2011 1st sp.s. takes effect July 1, 2011.

Expiration date—2011 1st sp.s. c 15 §§ 73-75: "Sections 73 through 75 of this act expire June 30, 2012." [2011 1st sp.s. c 15 § 128.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

47.06B.060 Council—Work group—Duties, membership, reports. (Effective until June 30, 2012.) (1) In 2007, the legislature directed the joint transportation committee to conduct a study of special needs transportation to examine and evaluate the effectiveness of special needs transportation in the state. A particular goal of the study was to explore opportunities to enhance coordination of special needs transportation programs to ensure that they are delivered efficiently and result in improved access and increased mobility options for their clients. It is the intent of the legislature to further consider some of the recommendations, and to implement many of these recommendations in the form of two pilot projects that will test the potential for applying these recommendations statewide in the future.

(2) The legislature is aware that the department of social and health services submitted an application in December of 2008 to the federal centers for medicare and medicaid services, seeking approval to use the medical match system, a federal funding system that has different requirements from the federal administrative match system currently used by the department. It is the intent of the legislature to advance the goals of chapter 515, Laws of 2009 and the recommendations of the study identified in subsection (1) of this section without jeopardizing the application made by the department.

(3) By August 15, 2009, the agency council on coordinated transportation shall appoint a work group for the purpose of identifying relevant federal requirements related to special needs transportation, and identifying solutions to streamline the requirements and increase efficiencies in transportation services provided for persons with special transportation needs. To advance its purpose, the work group shall work with relevant federal representatives and agencies to identify and address various challenges and barriers.

(4) Membership of the work group must include, but not be limited to, one or more representatives from:

- (a) The departments of transportation, veterans affairs, [and] health, and the health care authority;
 - (b) Medicaid nonemergency medical transportation brokers;
 - (c) Public transit agencies;
 - (d) Regional and metropolitan transportation planning organizations, including a representative of the regional transportation planning organization or organizations that provide staff support to the local coordinating coalition established under RCW 47.06B.070;
 - (e) Indian tribes;
 - (f) The agency council on coordinated transportation;
 - (g) The local coordinating coalitions established under RCW 47.06B.070; and
 - (h) The office of the superintendent of public instruction.
- (5) The work group shall elect one or more of its members to service as chair or cochairs.

(6) The work group shall immediately contact representatives of the federal congressional delegation for Washington state and the relevant federal agencies and coordinating authorities including, but not limited to, the federal transit administration, the United States department of health and human services, and the interagency transportation coordinating council on access and mobility, and invite the federal representatives to work collaboratively to:

(a) Identify transportation definitions and terminology used in the various relevant state and federal programs, and establish consistent transportation definitions and terminology. For purposes of this subsection, relevant state definitions exclude terminology that requires a medical determination, including whether a trip or service is medically necessary;

(b) Identify restrictions or barriers that preclude federal, state, and local agencies from sharing client lists or other client information, and make progress towards removing any restrictions or barriers;

(c) Identify relevant state and federal performance and cost reporting systems and requirements, and work towards establishing consistent and uniform performance and cost reporting systems and requirements; and

(d) Explore, subject to federal approval, opportunities to test cost allocation models, including the pilot projects established in RCW 47.06B.080, that:

(i) Allow for cost sharing among public paratransit and medicaid nonemergency medical trips; and

(ii) Capture the value of medicaid trips provided by public transit agencies for which they are not currently reimbursed with a funding match by federal medicaid dollars.

(7) By December 1, 2009, the work group shall submit a report to the joint transportation committee that explains the progress made towards the goals of this section and identifies any necessary legislative action that must be taken to implement all the provisions of this section. A second progress report must be submitted to the joint transportation committee by June 1, 2010, and a final report must be submitted to the joint transportation committee by December 1, 2010. [2011 1st sp.s. c 15 § 74; 2009 c 515 § 1.]

Expiration date—2011 1st sp.s. c 15 §§ 73-75: See note following RCW 47.06B.020.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

47.06B.070 Local coordinating coalitions—Creation, purpose, membership, meetings, staff. (Effective until June 30, 2012.)

(1) A local coordinating coalition is created in each nonemergency medical transportation brokerage region, as designated by the health care authority, that encompasses:

(a) A single county that has a population of more than seven hundred fifty thousand but less than one million; and

(b) Five counties, and is comprised of at least one county that has a population of more than four hundred thousand.

(2) The purpose of a local coordinating coalition is to advance local efforts to coordinate and maximize efficiencies in special needs transportation programs and services, contributing to the overall objectives and goals of the agency council on coordinated transportation. The local coordinat-

ing coalition shall serve in an advisory capacity to the agency council on coordinated transportation by providing the council with a focused and ongoing assessment of the special transportation needs and services provided within its region.

(3) The composition and size of each local coordinating coalition may vary by region. Local coordinating coalition members, appointed by the chair of the agency council on coordinated transportation to two-year terms, must reflect a balanced representation of the region's providers of special needs transportation services and must include:

(a) Members of existing local coordinating coalitions, with approval by those members;

(b) One or more representatives of the public transit agency or agencies serving the region;

(c) One or more representatives of private service providers;

(d) A representative of civic or community-based service providers;

(e) A consumer of special needs transportation services;

(f) A representative of nonemergency medical transportation medicaid brokers;

(g) A representative of social and human service programs;

(h) A representative of local high school districts; and

(i) A representative from the Washington state department of veterans affairs.

(4) Each coalition shall vote on an annual basis to elect one of its members to serve as chair. The position of chair must rotate among the represented members at least every two years. If the position of chair is vacated for any reason, the member representing the regional transportation planning organization described in subsection (6) of this section shall serve as acting chair until the next regular meeting of the coalition, at which time the members will elect a chair.

(5) Regular meetings of the local coordinating coalition may be convened at the call of the chair or by a majority of the members. Meetings must be open to the public, and held in locations that are readily accessible to public transportation.

(6) The regional transportation planning organization, as described in chapter 47.80 RCW, serving the region in which the local coordinating coalition is created shall provide necessary staff support for the local coordinating coalition. In regions served by more than one regional transportation planning organization, unless otherwise agreed to by the relevant planning organizations, the regional transportation planning organization serving the largest population within the region shall provide the necessary staff support. [2011 1st sp.s. c 15 § 75; 2009 c 515 § 9.]

Expiration date—2011 1st sp.s. c 15 §§ 73-75: See note following RCW 47.06B.020.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

47.06B.901 Repealer. (Effective January 1, 2012.)

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2012:

(1) RCW 47.06B.010 and 2009 c 515 § 3, 2007 c 421 § 1, 1999 c 385 § 1, & 1998 c 173 § 1;

(2) RCW 47.06B.012 and 1999 c 385 § 2;

(3) RCW 47.06B.020 and 2011 c 60 § 45, 2009 c 515 § 4, 2007 c 421 § 2, & 1998 c 173 § 2;

(4) RCW 47.06B.030 and 2007 c 421 § 3, 1999 c 385 § 5, & 1998 c 173 § 3;

(5) RCW 47.06B.040 and 2007 c 421 § 4 & 1999 c 385 § 6;

(6) RCW 47.06B.050 and 2009 c 515 § 8 & 2007 c 421 § 6;

(7) RCW 47.06B.060;

(8) RCW 47.06B.070;

(9) RCW 47.06B.075; and

(10) RCW 47.06B.080. [2011 c 60 § 51; 2009 c 515 § 18; 2007 c 421 § 9; 1999 c 385 § 8; 1998 c 173 § 7.]

Effective date—2011 c 60: See RCW 42.17A.919.

Chapter 47.10 RCW

HIGHWAY CONSTRUCTION BONDS

Sections

47.10.882	Toll facility bond retirement account.
47.10.886	Toll revenue bonds.
47.10.887	State finance committee authority—Department of transportation approval of actions—Bond owners' rights.
47.10.888	Definitions.

47.10.882 Toll facility bond retirement account. The toll facility bond retirement account is created in the state treasury for the purpose of payment of the principal of and interest and premium on bonds. Both principal of and interest on the bonds issued for the purposes of chapter 498, Laws of 2009 and chapter 377, Laws of 2011 shall be payable from the toll facility bond retirement account. The state finance committee may provide that special subaccounts be created in the account to facilitate payment of the principal of and interest on the bonds. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. [2011 c 377 § 3; 2009 c 498 § 11.]

Effective date—2011 c 377: See note following RCW 47.56.796.

47.10.886 Toll revenue bonds. If and to the extent that the state finance committee determines, in consultation with the department of transportation and the tolling authority, that it will be beneficial for the state to issue any bonds authorized in RCW 47.10.879 and 47.10.883 through 47.10.885 as toll revenue bonds rather than as general obligation bonds, the state finance committee is authorized to issue and sell, upon the request of the department of transportation, such bonds as toll revenue bonds and not as general obligation bonds. Notwithstanding RCW 47.10.883, each such bond shall contain a recital that payment or redemption of the bond and payment of the interest and any premium thereon is payable solely from and secured solely by a direct pledge, charge, and lien upon toll revenue and is not a general obligation of the state to which the full faith and credit of the state is pledged.

Toll revenue is hereby pledged to the payment of any bonds and the interest thereon issued under the authority of this section, and the legislature agrees to continue to impose these toll charges on the state route number 520 corridor, and on any other eligible toll facility designated by the legislature

and on which the imposition of tolls is authorized by the legislature in respect of the bonds, in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of this section. [2011 c 377 § 4. Prior: 2009 c 498 § 16.]

Effective date—2011 c 377: See note following RCW 47.56.796.

47.10.887 State finance committee authority—Department of transportation approval of actions—Bond owners' rights. The state finance committee may determine and include in any resolution authorizing the issuance of any bonds under chapter 498, Laws of 2009 and chapter 377, Laws of 2011, such terms, provisions, covenants, and conditions as it may deem appropriate in order to assist with the marketing and sale of the bonds, confer rights upon the owners of bonds, and safeguard rights of the owners of bonds including, among other things:

(1) Provisions regarding the maintenance and operation of eligible toll facilities;

(2) The pledges, uses, and priorities of application of toll revenue;

(3) Provisions that bonds shall be payable from and secured solely by toll revenue as provided by RCW 47.10.886, or shall be payable from and secured by both toll revenue and by a pledge of excise taxes on motor vehicle and special fuels and the full faith and credit of the state as provided in RCW 47.10.879 and 47.10.883 through 47.10.885;

(4) In consultation with the department of transportation and the tolling authority, financial covenants requiring that the eligible toll facilities must produce specified coverage ratios of toll revenue to debt service on bonds;

(5) The purposes and conditions that must be satisfied prior to the issuance of any additional bonds that are to be payable from and secured by any toll revenue on an equal basis with previously issued and outstanding bonds payable from and secured by toll revenue;

(6) Provisions that bonds for which any toll revenue are pledged, or for which a pledge of any toll revenue may be reserved, may be structured on a senior, parity, subordinate, or special lien basis in relation to any other bonds for which toll revenue is pledged, with respect to toll revenue only; and

(7) Provisions regarding reserves, credit enhancement, liquidity facilities, and payment agreements with respect to bonds.

Notwithstanding the foregoing, covenants and conditions detailing the character of management, maintenance, and operation of eligible toll facilities, insurance for eligible toll facilities, financial management of toll revenue, and disposition of eligible toll facilities must first be approved by the department of transportation.

The owner of any bond may by mandamus or other appropriate proceeding require and compel performance of any duties imposed upon the tolling authority and the department of transportation and their respective officials, including any duties imposed upon or undertaken by them or by their respective officers, agents, and employees, in connection with the construction, maintenance, and operation of eligible toll facilities and in connection with the collection, deposit, investment, application, and disbursement of the

proceeds of the bonds and toll revenue. [2011 c 377 § 5; 2009 c 498 § 17.]

Effective date—2011 c 377: See note following RCW 47.56.796.

47.10.888 Definitions. (1) For the purposes of chapter 498, Laws of 2009 and chapter 377, Laws of 2011, "toll revenue" means all toll receipts, all interest income derived from the investment of toll receipts, and any gifts, grants, or other funds received for the benefit of transportation facilities in the state, including eligible toll facilities. However, for the purpose of any pledge of toll revenue to the payment of particular bonds issued under chapter 498, Laws of 2009 and chapter 377, Laws of 2011, "toll revenue" means and includes only such toll revenue or portion thereof that is pledged to the payment of those bonds in the resolution authorizing the issuance of such bonds. Toll revenue constitutes "fees and revenues derived from the ownership or operation of any undertaking, facility, or project" as that phrase is used in Article VIII, section 1(c)(1) of the state Constitution.

(2) For the purposes of chapter 498, Laws of 2009 and chapter 377, Laws of 2011, "tolling authority" has the same meaning as in RCW 47.56.810. [2011 c 377 § 6; 2009 c 498 § 18.]

Effective date—2011 c 377: See note following RCW 47.56.796.

Chapter 47.12 RCW

ACQUISITION AND DISPOSITION OF STATE HIGHWAY PROPERTY

Sections

47.12.063	Surplus real property program. (<i>Effective until June 30, 2012.</i>)
47.12.063	Surplus real property program. (<i>Effective June 30, 2012.</i>)
47.12.244	Advance right-of-way revolving fund.

47.12.063 Surplus real property program. (*Effective until June 30, 2012.*) (1) It is the intent of the legislature to continue the department's policy giving priority consideration to abutting property owners in agricultural areas when disposing of property through its surplus property program under this section.

(2) Whenever the department determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for transportation purposes and that it is in the public interest to do so, the department may sell the property or exchange it in full or part consideration for land or improvements or for construction of improvements at fair market value to any person through the solicitation of written bids through public advertising in the manner prescribed under RCW 47.28.050 or in the manner prescribed under RCW 47.12.283.

(3) The department may forego the processes prescribed by RCW 47.28.050 and 47.12.283 and sell the real property to any of the following entities or persons at fair market value:

- Any other state agency;
- The city or county in which the property is situated;
- Any other municipal corporation;
- Regional transit authorities created under chapter 81.112 RCW;
- The former owner of the property from whom the state acquired title;

(f) In the case of residentially improved property, a tenant of the department who has resided thereon for not less than six months and who is not delinquent in paying rent to the state;

(g) Any abutting private owner but only after each other abutting private owner (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting private owner requests in writing the right to purchase the property within fifteen days after receiving notice of the proposed sale, the property shall be sold at public auction in the manner provided in RCW 47.12.283;

(h) To any other owner of real property required for transportation purposes;

(i) In the case of property suitable for residential use, any nonprofit organization dedicated to providing affordable housing to very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510 and is eligible to receive assistance through the Washington housing trust fund created in chapter 43.185 RCW;

(j) A federally qualified community health center as defined in RCW 82.04.4311; or

(k) A federally recognized Indian tribe within whose reservation boundary the property is located.

(4) When selling real property pursuant to RCW 47.12.283, the department may withhold or withdraw the property from an auction when requested by one of the entities or persons listed in subsection (3) of this section and only after the receipt of a nonrefundable deposit equal to ten percent of the fair market value of the real property or five thousand dollars, whichever is less. This subsection does not prohibit the department from exercising its discretion to withhold or withdraw the real property from an auction if the department determines that the property is no longer surplus or chooses to sell the property through one of the other means listed in subsection (2) of this section. If a transaction under this subsection is not completed within sixty days, the real property must be put back up for sale.

(5) Sales to purchasers may at the department's option be for cash, by real estate contract, or exchange of land or improvements. Transactions involving the construction of improvements must be conducted pursuant to chapter 47.28 RCW and Title 39 RCW, as applicable, and must comply with all other applicable laws and rules.

(6) Conveyances made pursuant to this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(7) Unless otherwise provided, all moneys received pursuant to the provisions of this section less any real estate broker commissions paid pursuant to RCW 47.12.320 shall be deposited in the motor vehicle fund. [2011 c 376 § 1; 2010 c 157 § 1; 2006 c 17 § 2; 2002 c 255 § 1; 1999 c 210 § 1; 1993 c 461 § 11; 1988 c 135 § 1; 1983 c 3 § 125; 1977 ex.s. c 78 § 1.]

Expiration date—2011 c 376 § 1: "Section 1 of this act expires June 30, 2012." [2011 c 376 § 3.]

Expiration date—2010 c 157 § 1: "Section 1 of this act expires June 30, 2012." [2010 c 157 § 2.]

Finding—1993 c 461: See note following RCW 43.63A.510.

Proceeds from the sale of surplus real property for construction of second Tacoma Narrows bridge deposited in Tacoma Narrows toll bridge account: RCW 47.56.165.

47.12.063 Surplus real property program. (*Effective June 30, 2012.*) (1) It is the intent of the legislature to continue the department's policy giving priority consideration to abutting property owners in agricultural areas when disposing of property through its surplus property program under this section.

(2) Whenever the department determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for transportation purposes and that it is in the public interest to do so, the department may sell the property or exchange it in full or part consideration for land or improvements or for construction of improvements at fair market value to any person through the solicitation of written bids through public advertising in the manner prescribed under RCW 47.28.050 or in the manner prescribed under RCW 47.12.283.

(3) The department may forego the processes prescribed by RCW 47.28.050 and 47.12.283 and sell the real property to any of the following entities or persons at fair market value:

- (a) Any other state agency;
- (b) The city or county in which the property is situated;
- (c) Any other municipal corporation;
- (d) Regional transit authorities created under chapter 81.112 RCW;
- (e) The former owner of the property from whom the state acquired title;
- (f) In the case of residentially improved property, a tenant of the department who has resided thereon for not less than six months and who is not delinquent in paying rent to the state;
- (g) Any abutting private owner but only after each other abutting private owner (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting private owner requests in writing the right to purchase the property within fifteen days after receiving notice of the proposed sale, the property shall be sold at public auction in the manner provided in RCW 47.12.283;
- (h) To any other owner of real property required for transportation purposes;
- (i) In the case of property suitable for residential use, any nonprofit organization dedicated to providing affordable housing to very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510 and is eligible to receive assistance through the Washington housing trust fund created in chapter 43.185 RCW; or
- (j) A federally recognized Indian tribe within whose reservation boundary the property is located.

(4) When selling real property pursuant to RCW 47.12.283, the department may withhold or withdraw the property from an auction when requested by one of the entities or persons listed in subsection (3) of this section and only after the receipt of a nonrefundable deposit equal to ten percent of the fair market value of the real property or five thousand dollars, whichever is less. This subsection does not prohibit the department from exercising its discretion to withhold or withdraw the real property from an auction if the department determines that the property is no longer surplus or chooses to sell the property through one of the other means listed in subsection (2) of this section. If a transaction under

this subsection is not completed within sixty days, the real property must be put back up for sale.

(5) Sales to purchasers may at the department's option be for cash, by real estate contract, or exchange of land or improvements. Transactions involving the construction of improvements must be conducted pursuant to chapter 47.28 RCW and Title 39 RCW, as applicable, and must comply with all other applicable laws and rules.

(6) Conveyances made pursuant to this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(7) Unless otherwise provided, all moneys received pursuant to the provisions of this section less any real estate broker commissions paid pursuant to RCW 47.12.320 shall be deposited in the motor vehicle fund. [2011 c 376 § 2; 2006 c 17 § 2; 2002 c 255 § 1; 1999 c 210 § 1; 1993 c 461 § 11; 1988 c 135 § 1; 1983 c 3 § 125; 1977 ex.s. c 78 § 1.]

Effective date—2011 c 376 § 2: "Section 2 of this act takes effect June 30, 2012." [2011 c 376 § 4.]

Finding—1993 c 461: See note following RCW 43.63A.510.

Proceeds from the sale of surplus real property for construction of second Tacoma Narrows bridge deposited in Tacoma Narrows toll bridge account: RCW 47.56.165.

47.12.244 Advance right-of-way revolving fund.

There is created the "advance right-of-way revolving fund" in the custody of the treasurer, into which the department is authorized to deposit directly and expend without appropriation:

(1) An initial deposit of ten million dollars from the motor vehicle fund included in the department of transportation's 1991-93 budget;

(2) All moneys received by the department as rental income from real properties that are not subject to federal aid reimbursement, except moneys received from rental of capital facilities properties as defined in *chapter 47.13 RCW; and

(3) Any federal moneys available for acquisition of right-of-way for future construction under the provisions of section 108 of Title 23, United States Code.

During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may transfer from the advance right-of-way revolving fund to the motor vehicle account amounts as reflect the excess fund balance of the advance right-of-way revolving fund. [2011 c 367 § 717; 2009 c 470 § 709; 2007 c 518 § 707; 1991 c 291 § 2; 1984 c 7 § 125; 1969 ex.s. c 197 § 7.]

***Reviser's note:** Chapter 47.13 RCW was repealed by 1999 c 94 § 33, effective July 1, 1999.

Effective date—2011 c 367: See note following RCW 47.29.170.

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Additional notes found at www.leg.wa.gov

Chapter 47.17 RCW STATE HIGHWAY ROUTES

Sections

47.17.745 State route No. 527.

47.17.745 State route No. 527. A state highway to be known as state route number 527 is established as follows:

Beginning at a junction with state route number 405 in the vicinity of Bothell, thence northerly to a junction with state route number 5 in Everett. [2011 c 201 § 1; 1970 ex.s. c 51 § 150.]

Chapter 47.26 RCW

DEVELOPMENT IN URBAN AREAS— URBAN ARTERIALS

Sections

47.26.080	Repealed.
47.26.084	Transportation improvement account—Small city program—Certification of funding.
47.26.086	Transportation improvement account projects—Limitations.
47.26.140	Transportation improvement board—Executive director, staff—Finances.
47.26.190	Geographical diversity—Rules.
47.26.345	Small city pavement and sidewalk funding.
47.26.423	Bonds—Bond proceeds—Deposit and use.
47.26.425	Bonds—Designation of funds to repay bonds and interest.
47.26.4252	Bonds—Series II bonds, 1979 reenactment—Designation of funds to repay bonds and interest.
47.26.4254	Bonds—Series III bonds—Designation of funds to repay bonds and interest.

47.26.080 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

47.26.084 Transportation improvement account—Small city program—Certification of funding. (1) The transportation improvement account is hereby created in the motor vehicle fund. The intent of the program is to:

(a) Improve mobility of people and goods in Washington state by supporting economic development and environmentally responsive solutions to our statewide transportation system needs;

(b) Improve the arterial street system of the state by improving mobility and safety while supporting an environment essential to the quality of life of the citizens of the state; and

(c) Maintain, preserve, and extend the life and utility of prior investments in transportation systems and services.

(2) The small city program, as provided for in RCW 47.26.115, is implemented within the transportation improvement account.

(3) Within one year after board approval of an application for funding, a county, city, or transportation benefit district shall provide written certification to the board of the pledged local and/or private funding. Funds allocated to an applicant that does not certify its funding within one year after approval may be reallocated by the board. [2011 c 120 § 6; 1999 c 94 § 17; 1994 c 179 § 10; 1988 c 167 § 2.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Additional notes found at www.leg.wa.gov

47.26.086 Transportation improvement account projects—Limitations. Transportation improvement account projects selected for funding programs after fiscal year 1995 are governed by the requirements of this section.

The board shall allocate funds from the account by June 30th of each year for the ensuing fiscal year to urban coun-

ties, cities with a population of five thousand and over, and to transportation benefit districts. Projects may include, but are not limited to, multi-agency projects and arterial improvement projects in fast-growing areas. The board shall endeavor to provide geographical diversity in selecting improvement projects to be funded from the account.

To be eligible to receive these funds, a project must be consistent with the Growth Management Act, the Clean Air Act including conformity, and the Commute Trip Reduction Law and consideration must have been given to the project's relationship, both actual and potential, with the statewide rail passenger program and rapid mass transit. Projects must be consistent with any adopted high capacity transportation plan, must consider existing or reasonably foreseeable congestion levels attributable to economic development or growth and all modes of transportation and safety, and must be partially funded by local government or private contributions, or a combination of such contributions. Priority consideration shall be given to those projects with the greatest percentage of local or private contribution, or both.

Within one year after board approval of an application for funding, the lead agency shall provide written certification to the board of the pledged local and private funding for the phase of the project approved. Funds allocated to an applicant that does not certify its funding within one year after approval may be reallocated by the board. [2011 c 120 § 7; 1994 c 179 § 11.]

47.26.140 Transportation improvement board—Executive director, staff—Finances. The transportation improvement board shall appoint an executive director, who shall serve at its pleasure and whose salary shall be set by the board, and may employ additional staff as it deems appropriate. All costs associated with staff, together with travel expenses in accordance with RCW 43.03.050 and 43.03.060, shall be paid from the public transportation systems account and the transportation improvement account in the motor vehicle fund as determined by the biennial appropriation. [2011 c 120 § 9; 1999 c 94 § 19; 1996 c 49 § 2; 1995 c 269 § 2605; 1994 c 179 § 14; 1988 c 167 § 16; 1977 ex.s. c 151 § 58; 1975-'76 2nd ex.s. c 34 § 140; 1969 ex.s. c 171 § 3; 1967 ex.s. c 83 § 20.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Additional notes found at www.leg.wa.gov

47.26.190 Geographical diversity—Rules. The board shall adopt rules that provide geographical diversity in selecting improvement projects to be funded from the transportation improvement account and small city program funds. [2011 c 120 § 8; 1994 c 179 § 18; 1988 c 167 § 22; 1987 c 360 § 1; 1981 c 315 § 4; 1979 c 151 § 162; 1977 ex.s. c 317 § 14; 1973 1st ex.s. c 126 § 2; 1971 ex.s. c 291 § 3; 1969 ex.s. c 171 § 4; 1967 ex.s. c 83 § 25.]

Population determinations, office of financial management: Chapter 43.62 RCW.

Additional notes found at www.leg.wa.gov

47.26.345 Small city pavement and sidewalk funding. All cities and towns with a population of less than five thou-

sand are eligible to receive money from the small city pavement and sidewalk account created under RCW 47.26.340 for maintenance, repair, and resurfacing of city and town streets. For the purposes of determining population under this section, cities may include or exclude the population of any state correctional facility located within the city. The board shall determine the allocation of money based on:

(1) The amount of available funds within the small city pavement and sidewalk account;

(2) Whether the city or town meets one or more of the following criteria:

(a) The city or town has identified a street in a six-year transportation improvement plan, as defined by RCW 35.77.010, or a project identified through the use of a pavement management system;

(b) The city or town has provided pavement rating information on the proposed street improvement or street network improvement;

(c) The city or town has provided sidewalk information on the proposed sidewalk system improvement;

(d) The city or town has provided information, where available, on traffic conditions for truck routes, bus routes, and traffic volumes;

(e) The city or town has the ability to provide a local match as demonstrated by one or more of the following:

(i) A funding match based upon a city's assessed valuation;

(ii) Community involvement and support, including volunteer participation, such as landscaping and maintaining landscaping along the street or sidewalk system; or

(iii) Partnership efforts with federal or other state programs, including the department of commerce mainstreet program. [2011 c 14 § 3; 2005 c 83 § 3.]

Findings—Effective dates—2005 c 83: See notes following RCW 47.26.340.

47.26.423 Bonds—Bond proceeds—Deposit and use.

The money arising from the sale of the first authorization bonds, series II bonds, and series III bonds shall be deposited in the state treasury to the credit of the transportation improvement account in the motor vehicle fund, and such money shall be available only for the construction and improvement of county and city urban arterials, and for payment of the expense incurred in the printing, issuance, and sale of any such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds. [2011 c 120 § 10; 1986 c 290 § 5; 1981 c 315 § 8; 1979 c 5 § 6; 1967 ex.s. c 83 § 48.]

Additional notes found at www.leg.wa.gov

47.26.425 Bonds—Designation of funds to repay bonds and interest. Any funds required to repay the first authorization of two hundred fifty million dollars of bonds authorized by RCW 47.26.420, as amended by section 18, chapter 317, Laws of 1977 ex. sess. or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the transportation improvement account in the motor vehicle

fund pursuant to RCW 46.68.090(2)(e), and shall never constitute a charge against any allocations of any other such funds in the motor vehicle fund to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise tax on motor vehicle and special fuels and distributed to the transportation improvement account proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [2011 c 120 § 11; 2007 c 519 § 7; 1999 sp.s. c 1 § 609. Prior: 1999 c 269 § 6; 1999 c 94 § 21; 1994 c 179 § 22; 1977 ex.s. c 317 § 20; 1967 ex.s. c 83 § 50.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Additional notes found at www.leg.wa.gov

47.26.4252 Bonds—Series II bonds, 1979 reenactment—Designation of funds to repay bonds and interest.

Any funds required to repay the authorization of series II bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979, or the interest thereon when due, shall first be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW and which is distributed to the transportation improvement account in the motor vehicle fund pursuant to RCW 46.68.090(2)(e), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979. If the moneys distributed to the transportation improvement account shall ever be insufficient to repay the first authorization bonds together with interest thereon, and the series II bonds or the interest thereon when due, the amount required to make such payments on such bonds or interest thereon shall next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090. Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues which are distributable to the state, counties, cities, and towns, shall be repaid from the first moneys distributed to the transportation improvement account not required for redemption of the first authorization bonds or series II and series III bonds or interest on those bond issues. [2011 c 120 § 12; 1999 sp.s. c 1 § 610. Prior: 1999 c 269 § 7; 1999 c 94 § 22; 1995 c 274 § 12; 1994 c 179 § 23; 1983 1st ex.s. c 49 § 23; 1979 c 5 § 8.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Additional notes found at www.leg.wa.gov

47.26.4254 Bonds—Series III bonds—Designation of funds to repay bonds and interest.

(1) Any funds required to repay series III bonds authorized by RCW 47.26.420, or the interest thereon, when due shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW and that is distributed to the transportation improvement account in the motor vehicle fund pursuant to RCW 46.68.090(2)(e), subject, however, to the prior lien of the first authorization of

bonds authorized by RCW 47.26.420. If the moneys so distributed to the transportation improvement account, after first being applied to administrative expenses of the transportation improvement board and to the requirements of bond retirement and payment of interest on first authorization bonds and series II bonds as provided in RCW 47.26.425 and 47.26.4252, are insufficient to meet the requirements for bond retirement or interest on any series III bonds, the amount required to make such payments on series III bonds or interest thereon shall next be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090, subject, however, to subsection (2) of this section.

(2) To the extent that moneys so distributed to the transportation improvement account are insufficient to meet the requirements for bond retirement or interest on any series III bonds, sixty percent of the amount required to make such payments when due shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state. The remaining forty percent shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the cities and towns pursuant to RCW 46.68.090(2)(g) and to the counties pursuant to RCW 46.68.090(2)(h). Of the counties', cities', and towns' share of any additional amounts required in each fiscal year, the percentage thereof to be taken from the counties' distributive share and from the cities' and towns' distributive share shall correspond to the percentage of funds authorized for specific county projects and for specific city and town projects, respectively, from the proceeds of series III bonds, for the period through the first eleven months of the prior fiscal year as determined by the chair of the transportation improvement board and reported to the state finance committee and the state treasurer not later than the first working day of June.

(3) Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues that are distributable to the state, counties, cities, and towns shall be repaid from the first moneys distributed to the transportation improvement account not required for redemption of the first authorization bonds, series II bonds, or series III bonds or interest on these bonds. [2011 c 120 § 13; 2010 c 8 § 10008; 1999 sp.s. c 1 § 611. Prior: 1999 c 269 § 8; 1999 c 94 § 23; 1995 c 274 § 13; 1994 c 179 § 24; 1988 c 167 § 30; 1983 1st ex.s. c 49 § 24; 1981 c 315 § 10.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Additional notes found at www.leg.wa.gov

Chapter 47.28 RCW

CONSTRUCTION AND MAINTENANCE OF HIGHWAYS

Sections

47.28.030	Contracts—State forces—Monetary limits—Small businesses, veteran, minority, and women contractors—Rules—Work on ferry vessels and terminals, ferry vessel program.
47.28.251	Alternative delivery of construction services—Financial incentives—Private contracting—Reports.

47.28.030 Contracts—State forces—Monetary limits—Small businesses, veteran, minority, and women contractors—Rules—Work on ferry vessels and terminals, ferry vessel program. (1)(a) A state highway shall be constructed, altered, repaired, or improved, and improvements located on property acquired for right-of-way purposes may be repaired or renovated pending the use of such right-of-way for highway purposes, by contract or state forces. The work or portions thereof may be done by state forces when the estimated costs thereof are less than fifty thousand dollars and effective July 1, 2005, sixty thousand dollars.

(b) When delay of performance of such work would jeopardize a state highway or constitute a danger to the traveling public, the work may be done by state forces when the estimated cost thereof is less than eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars.

(c) When the department of transportation determines to do the work by state forces, it shall enter a statement upon its records to that effect, stating the reasons therefor.

(d) To enable a larger number of small businesses and veteran, minority, and women contractors to effectively compete for department of transportation contracts, the department may adopt rules providing for bids and award of contracts for the performance of work, or furnishing equipment, materials, supplies, or operating services whenever any work is to be performed and the engineer's estimate indicates the cost of the work would not exceed eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars.

(2) The rules adopted under this section:

(a) Shall provide for competitive bids to the extent that competitive sources are available except when delay of performance would jeopardize life or property or inconvenience the traveling public; and

(b) Need not require the furnishing of a bid deposit nor a performance bond, but if a performance bond is not required then progress payments to the contractor may be required to be made based on submittal of paid invoices to substantiate proof that disbursements have been made to laborers, material suppliers, mechanics, and subcontractors from the previous partial payment; and

(c) May establish prequalification standards and procedures as an alternative to those set forth in RCW 47.28.070, but the prequalification standards and procedures under RCW 47.28.070 shall always be sufficient.

(3) The department of transportation shall comply with such goals and rules as may be adopted by the office of minority and women's business enterprises to implement chapter 39.19 RCW with respect to contracts entered into under this chapter. The department may adopt such rules as may be necessary to comply with the rules adopted by the office of minority and women's business enterprises under chapter 39.19 RCW.

(4)(a) For the period of March 15, 2010, through June 30, 2013, work for less than one hundred twenty thousand dollars may be performed on ferry vessels and terminals by state forces.

(b) The department shall hire a disinterested, third party to conduct an independent analysis to identify methods of reducing out-of-service times for vessel maintenance, preservation, and improvement projects. The analysis must include options that consider consolidating work while vessels are at

shipyards by having state forces perform services traditionally performed at Eagle Harbor at the shipyard and decreasing the allowable time at shipyards. The analysis must also compare the out-of-service vessel times of performing services by state forces versus contracting out those services which in turn must be used to form a recommendation as to what the threshold of work performed on ferry vessels and terminals by state forces should be. This analysis must be presented to the transportation committees of the senate and house of representatives by December 1, 2010.

(c) The department shall develop a proposed ferry vessel maintenance, preservation, and improvement program and present it to the transportation committees of the senate and house of representatives by December 1, 2010. The proposed program must:

(i) Improve the basis for budgeting vessel maintenance, preservation, and improvement costs and for projecting those costs into a sixteen-year financial plan;

(ii) Limit the amount of planned out-of-service time to the greatest extent possible, including options associated with department staff as well as commercial shipyards; and

(iii) Be based on the service plan in the capital plan, recognizing that vessel preservation and improvement needs may vary by route.

(d) In developing the proposed ferry vessel maintenance, preservation, and improvement program, the department shall consider the following, related to reducing vessel out-of-service time:

(i) The costs compared to benefits of Eagle Harbor repair and maintenance facility operations options to include staffing costs and benefits in terms of reduced out-of-service time;

(ii) The maintenance requirements for on-vessel staff, including the benefits of a systemwide standard;

(iii) The costs compared to benefits of staff performing preservation or maintenance work, or both, while the vessel is underway, tied up between sailings, or not deployed;

(iv) A review of the department's vessel maintenance, preservation, and improvement program contracting process and contractual requirements;

(v) The costs compared to benefits of allowing for increased costs associated with expedited delivery;

(vi) A method for comparing the anticipated out-of-service time of proposed projects and other projects planned during the same construction period;

(vii) Coordination with required United States coast guard dry dockings;

(viii) A method for comparing how proposed projects relate to the service requirements of the route on which the vessel normally operates; and

(ix) A method for evaluating the ongoing maintenance and preservation costs associated with proposed improvement projects. [2011 c 367 § 710. Prior: 2010 c 283 § 9; 2010 c 5 § 11; 2007 c 218 § 90; 1999 c 15 § 1; 1984 c 194 § 1; 1983 c 120 § 15; 1977 ex.s. c 225 § 3; 1973 c 116 § 1; 1971 ex.s. c 78 § 1; 1969 ex.s. c 180 § 2; 1967 ex.s. c 145 § 40; 1961 c 233 § 1; 1961 c 13 § 47.28.030; prior: 1953 c 29 § 1; 1949 c 70 § 1, part; 1943 c 132 § 1, part; 1937 c 53 § 41, part; Rem. Supp. 1949 § 6400-41, part.]

Effective date—2011 c 367: See note following RCW 47.29.170.

Findings—Intent—Effective date—Management review of ferries division—Assaults on Washington state ferries employees—2010 c 283: See notes following RCW 47.60.355.

Purpose—Construction—2010 c 5: See notes following RCW 43.60A.010.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Office of minority and women's business enterprises: Chapter 39.19 RCW.

Additional notes found at www.leg.wa.gov

47.28.251 Alternative delivery of construction services—Financial incentives—Private contracting—Reports. (1) The department of transportation shall work with representatives of transportation labor groups to develop a financial incentive program to aid in retention and recruitment of employee classifications where problems exist and program delivery is negatively affected. The department's financial incentive program must be reviewed and approved by the legislature before it can be implemented. This program must support the goal of enhancing project delivery timelines as outlined in section 101, chapter 363, Laws of 2003. Upon receiving approval from the legislature, the office of financial management shall implement, as required, specific aspects of the financial incentive package, as developed by the department of transportation.

(2) Notwithstanding chapter 41.06 RCW, the department of transportation may acquire services from qualified private firms in order to deliver the transportation construction program to the public. Services may be acquired solely for augmenting the department's workforce capacity and only when the department's transportation construction program cannot be delivered through its existing or readily available workforce. The department of transportation shall work with representatives of transportation labor groups to develop and implement a program identifying those projects requiring contracted services while establishing a program as defined in subsection (1) of this section to provide the classified personnel necessary to deliver future construction programs. The procedures for acquiring construction engineering services from private firms may not be used to displace existing state employees nor diminish the number of existing classified positions in the present construction program. The acquisition procedures must be in accordance with chapter 39.80 RCW.

(3) Starting in December 2004, and biennially thereafter, the secretary shall report to the transportation committees of the legislature on the use of construction engineering services from private firms authorized under this section. The information provided to the committees must include an assessment of the benefits and costs associated with using construction engineering services, or other services, from private firms, and a comparison of public versus private sector costs. The secretary may act on these findings to ensure the most cost-effective means of service delivery. [2011 1st sp.s. c 43 § 477; 2003 c 363 § 103.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Finding—Intent—2003 c 363 §§ 103 and 104: "The legislature finds that there is a pressing need for additional transportation projects to meet the mobility needs of Washington's citizens. With major new investments approved to meet these pressing needs, additional workforce assistance is necessary to ensure and enhance project delivery timelines. Recruiting and retaining a high quality workforce, and implementing new and innovative

procedures for delivering these transportation projects, is required to accomplish them on a timely basis that best serves the public. It is the intent of sections 103 and 104 of this act that no state employees will lose their employment as a result of implementing new and innovative project delivery procedures." [2003 c 363 § 101.]

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

Chapter 47.29 RCW

TRANSPORTATION INNOVATIVE PARTNERSHIPS

Sections

47.29.170 Unsolicited proposals.

47.29.170 Unsolicited proposals. Before accepting any unsolicited project proposals, the commission must adopt rules to facilitate the acceptance, review, evaluation, and selection of unsolicited project proposals. These rules must include the following:

- (1) Provisions that specify unsolicited proposals must meet predetermined criteria;
- (2) Provisions governing procedures for the cessation of negotiations and consideration;
- (3) Provisions outlining that unsolicited proposals are subject to a two-step process that begins with concept proposals and would only advance to the second step, which are fully detailed proposals, if the commission so directed;
- (4) Provisions that require concept proposals to include at least the following information: Proposers' qualifications and experience; description of the proposed project and impact; proposed project financing; and known public benefits and opposition; and
- (5) Provisions that specify the process to be followed if the commission is interested in the concept proposal, which must include provisions:
 - (a) Requiring that information regarding the potential project would be published for a period of not less than thirty days, during which time entities could express interest in submitting a proposal;
 - (b) Specifying that if letters of interest were received during the thirty days, then an additional sixty days for submission of the fully detailed proposal would be allowed; and
 - (c) Procedures for what will happen if there are insufficient proposals submitted or if there are no letters of interest submitted in the appropriate time frame.

The commission may adopt other rules as necessary to avoid conflicts with existing laws, statutes, or contractual obligations of the state.

The commission may not accept or consider any unsolicited proposals before July 1, 2013. [2011 c 367 § 701; 2009 c 470 § 702; 2007 c 518 § 702; 2006 c 370 § 604; 2005 c 317 § 17.]

Effective date—2011 c 367: "Except for sections 703, 704, 705, 716, 719, and 722 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2011]." [2011 c 367 § 1102.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Severability—2006 c 370: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected." [2006 c 370 § 701.]

Effective date—2006 c 370: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2006]." [2006 c 370 § 702.]

Chapter 47.39 RCW

SCENIC AND RECREATIONAL HIGHWAY ACT OF 1967

Sections

47.39.020 Designation of portions of existing highways and ferry routes as part of system.

47.39.020 Designation of portions of existing highways and ferry routes as part of system. The following portions of highways are designated as part of the scenic and recreational highway system:

- (1) State route number 2, beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin; also Beginning at the junction with state route number 17, in the vicinity of Coulee City, thence easterly to the junction with state route number 155;
- (2) State route number 3, beginning at a junction with state route number 101 in the vicinity of Shelton, thence northeasterly and northerly to a junction with state route number 104 in the vicinity of Port Gamble;
- (3) State route number 4, beginning at the junction with state route number 101, thence easterly through Cathlamet to Coal Creek road, approximately .5 miles west of the Longview city limits;
- (4) State route number 5, beginning at the junction with Starbird Road in Snohomish county, thence northerly to the junction with Bow Hill Road in Skagit county, to be designated as an agricultural scenic corridor with appropriate signage;
- (5) State route number 6, beginning at the junction with state route number 101 in Raymond, thence easterly to the junction with state route number 5, in the vicinity of Chehalis;
- (6) State route number 7, beginning at the junction with state route number 12 in Morton, thence northerly to the junction with state route number 507;
- (7) State route number 8, beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 near Tumwater;
- (8) State route number 9, beginning at the junction with state route number 530 in Arlington, thence northerly to the end of the route at the Canadian border;
- (9) State route number 10, beginning at Teanaway junction, thence easterly to a junction with state route number 97 west of Ellensburg;
- (10) State route number 11, beginning at the junction with state route number 5 in the vicinity of Burlington, thence in a northerly direction to the junction with state route number 5;
- (11) State route number 12, beginning at a junction with a county road approximately 2.8 miles west of the crossing of the Wynoochee river which is approximately 1.2 miles west

of Montesano, thence in an easterly direction to a junction with state route number 8 in the vicinity of Elma; also

Beginning at a junction with state route number 5, thence easterly by way of Morton, Randle, and Packwood to the junction with state route number 410, approximately 3.5 miles west of Naches; also

Beginning at the junction with state route number 124 in the vicinity of the Tri-Cities, thence easterly through Wallula and Touchet to a junction with a county road approximately 2.4 miles west of a junction with state route number 129 at Clarkston;

(12) State route number 14, beginning at the crossing of Gibbons creek approximately 0.9 miles east of Washougal, thence easterly along the north bank of the Columbia river to a point in the vicinity of Plymouth;

(13) State route number 17, beginning at a junction with state route number 395 in the vicinity of Mesa, thence northerly to the junction with state route number 97 in the vicinity of Brewster;

(14) State route number 19, the Chimacum-Beaver Valley road, beginning at the junction with state route number 104, thence northerly to the junction with state route number 20;

(15) State route number 20, beginning at the junction with state route number 101 to the ferry zone in Port Townsend; also

Beginning at the Keystone ferry slip on Whidbey Island, thence northerly and easterly to a junction with state route number 153 southeast of Twisp; also

Beginning at the junction of state route number 97 in the vicinity of Okanogan, thence westerly across the Okanogan river to the junction with state route number 215; also

Beginning at a junction with state route number 97 near Tonasket, thence easterly and southerly to a junction with state route number 2 at Newport;

(16) State route number 25, beginning at the Spokane river bridge, thence northerly through Cedonia, Gifford, Kettle Falls, and Northport, to the Canadian border;

(17) State route number 26, beginning at the Whitman county boundary line, thence easterly by way of the vicinities of La Crosse and Dusty to a junction with state route number 195 in the vicinity of Colfax;

(18) State route number 27, beginning at a junction with state route number 195 in the vicinity of Pullman, thence northerly by way of the vicinities of Palouse and Garfield to a junction with state route number 271 in the vicinity of Oakesdale; also

From a junction with state route number 271 at Oakesdale, thence northerly to the vicinity of Rockford;

(19) State route number 31, beginning at the junction with state route number 20 in Tiger, thence northerly to the Canadian border;

(20) State route number 82, beginning at the junction with state route number 395 south of the Tri-Cities area, thence southerly to the end of the route at the Oregon border;

(21) State route number 90, beginning at the junction with East Sunset Way in the vicinity east of Issaquah, thence easterly to Thorp road 9.0 miles west of Ellensburg;

(22) State route number 97, beginning at the Oregon border, in a northerly direction through Toppenish and Wapato to the junction with state route number 82 at Union Gap; also

Beginning at the junction with state route number 10, 2.5 miles north of Ellensburg, in a northerly direction to the junction with state route number 2, 4.0 miles east of Leavenworth; also

Beginning at the junction of state route number 153 in the vicinity south of Pateros, thence northerly by way of the vicinities of Brewster, Okanogan, Omak, Riverside, Tonasket, and Oroville to the international boundary line;

(23) State route number 97 alternate, beginning at the junction with state route number 2 in the vicinity of Monitor, thence northerly to the junction with state route number 97, approximately 5.0 miles north of Chelan;

(24) State route number 101, beginning at the Astoria-Megler bridge, thence north to Fowler street in Raymond; also

Beginning at a junction with state route number 109 in the vicinity of Queets, thence in a northerly, northeasterly, and easterly direction by way of Forks to the junction with state route number 5 in the vicinity of Olympia;

(25) State route number 104, beginning at a junction with state route number 101 in the vicinity south of Discovery bay, thence in a southeasterly direction to the Kingston ferry crossing;

(26) State route number 105, beginning at a junction with state route number 101 at Raymond, thence westerly and northerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen;

(27) State route number 109, beginning at a junction with state route number 101 in Hoquiam to a junction with state route number 101 in the vicinity of Queets;

(28) State route number 112, beginning at the easterly boundary of the Makah Indian reservation, thence in an easterly direction to the vicinity of Laird's corner on state route number 101;

(29) State route number 116, beginning at the junction with the Chimacum-Beaver Valley road, thence in an easterly direction to Fort Flagler State Park;

(30) State route number 119, beginning at the junction with state route number 101 at Hoodspport, thence northwesterly to the Mount Rose development intersection;

(31) State route number 122, Harmony road, between the junction with state route number 12 near Mayfield dam and the junction with state route number 12 in Mossyrock;

(32) State route number 123, beginning at the junction with state route number 12 in the vicinity of Morton, thence northerly to the junction with state route number 410;

(33) State route number 129, beginning at the Oregon border, thence northerly to the junction with state route number 12 in Clarkston;

(34) State route number 141, beginning at the junction with state route number 14 in Bingen, thence northerly to the end of the route at the Skamania county line;

(35) State route number 142, beginning at the junction with state route number 14 in Lyle, thence northeasterly to the junction with state route number 97, .5 miles from Goldendale;

(36) State route number 153, beginning at a junction with state route number 97 in the vicinity of Pateros, thence in a

northerly direction to a junction with state route number 20 in the vicinity south of Twisp;

(37) State route number 155, beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence northerly and westerly to the junction with state route number 215;

(38) State route number 194, beginning at the Port of Almota to the junction with state route number 195 in the vicinity of Pullman;

(39) State route number 195, beginning at the Washington-Idaho boundary line southeast of Uniontown, thence northwesterly and northerly by way of the vicinity of Colton, Pullman, Colfax, Steptoe, and Rosalia to the Whitman county boundary line;

(40) State route number 202, beginning at the junction with state route number 522, thence in an easterly direction to the junction with state route number 90 in the vicinity of North Bend;

(41) State route number 211, beginning at the junction with state route number 2, thence northerly to the junction with state route number 20 in the vicinity of Usk;

(42) State route number 215, beginning at the junction of state route number 20 in the vicinity of Okanogan, thence northeasterly on the west side of the Okanogan river to a junction with state route number 97 north of Omak;

(43) State route number 231, beginning at the junction with state route number 23, in the vicinity of Sprague, thence in a northerly direction to the junction with state route number 2, approximately 2.5 miles west of Reardan;

(44) State route number 261, beginning at the junction with state route number 12 in the vicinity of Delaney, thence northwesterly to the junction with state route number 260;

(45) State route number 262, beginning at the junction with state route number 26, thence northeasterly to the junction with state route number 17 between Moses Lake and Othello;

(46) State route number 271, beginning at a junction with state route number 27 in the vicinity of Oakesdale, thence northwesterly to a junction with state route number 195 in the vicinity south of Rosalia;

(47) State route number 272, beginning at the junction with state route number 195 in Colfax, thence easterly to the Idaho state line, approximately 1.5 miles east of Palouse;

(48) State route number 278, beginning at a junction with state route number 27, thence easterly via Rockford to the Idaho state line;

(49) State route number 305, beginning at the Winslow ferry dock to the junction with state route number 3 approximately 1.0 mile north of Poulsbo;

(50) State route number 395, beginning at the north end of the crossing of Mill creek in the vicinity of Colville, thence in a northwesterly direction to a junction with state route number 20 at the west end of the crossing over the Columbia river at Kettle Falls;

(51) State route number 401, beginning at a junction with state route number 101 at Point Ellice, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle;

(52) State route number 410, beginning 4.0 miles east of Enumclaw, thence in an easterly direction to the junction

with state route number 12, approximately 3.5 miles west of Naches;

(53) State route number 501, beginning at the junction with state route number 5 in the vicinity of Vancouver, thence northwesterly on the New Lower River road around Vancouver Lake;

(54) State route number 503, beginning at the junction with state route number 500, thence northerly by way of Battle Ground and Yale to the junction with state route number 5 in the vicinity of Woodland;

(55) State route number 504, beginning at a junction with state route number 5 at Castle Rock, to the end of the route on Johnston Ridge, approximately milepost 52;

(56) State route number 505, beginning at the junction with state route number 504, thence northwesterly by way of Toledo to the junction with state route number 5;

(57) State route number 508, beginning at the junction with state route number 5, thence in an easterly direction to the junction with state route number 7 in Morton;

(58) State route number 525, beginning at the ferry toll booth on Whidbey Island to a junction with state route number 20 east of the Keystone ferry slip;

(59) State route number 542, beginning at the junction with state route number 5, thence easterly to the vicinity of Austin pass in Whatcom county;

(60) State route number 547, beginning at the junction with state route number 542 in Kendall, thence northwesterly to the junction with state route number 9 in the vicinity of the Canadian border;

(61) State route number 706, beginning at the junction with state route number 7 in Elbe, in an easterly direction to the end of the route at Mt. Rainier National Park;

(62) State route number 821, beginning at a junction with state route number 82 at the Yakima firing center interchange, thence in a northerly direction to a junction with state route number 82 at the Thrall road interchange;

(63) State route number 971, Navarre Coulee road, between the junction with state route number 97 and the junction with South Lakeshore road;

(64) Beginning at the Anacortes ferry landing, the Washington state ferries Anacortes/San Juan Islands route, which includes stops at Lopez, Shaw, Orcas, and San Juan Islands; and the roads on San Juan and Orcas Islands as described in San Juan Island county council resolution number 7, adopted February 5, 2008;

(65) All Washington state ferry routes. [2011 c 123 § 1; 2010 c 14 § 2; 2009 c 277 § 1; 2003 c 55 § 1; 1993 c 430 § 7; 1992 c 26 § 2; 1991 c 342 § 54; 1990 c 240 § 3; 1975 c 63 § 8; 1973 1st ex.s. c 151 § 10; 1971 ex.s. c 73 § 29; 1970 ex.s. c 51 § 177; 1969 ex.s. c 281 § 6; 1967 ex.s. c 85 § 2.]

Legislative finding—1990 c 240: "The legislature finds that scenic and recreational highways are designated because of a need to develop management plans that will protect and preserve the scenic and recreational resources from loss through inappropriate development. Protection of scenic and recreational resources includes managing land use outside normal highway rights-of-way. The legislature recognizes that scenic and recreational highways are typically located in areas that are natural in character, along watercourses or through mountainous areas, or in areas with a view of such scenery." [1990 c 240 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 47.52 RCW

LIMITED ACCESS FACILITIES

Sections

47.52.025 Additional powers—Controlling use of limited access facilities—High occupancy vehicle lanes—Definition.

47.52.025 Additional powers—Controlling use of limited access facilities—High occupancy vehicle lanes—

Definition. (1) Highway authorities of the state, counties, and incorporated cities and towns, in addition to the specific powers granted in this chapter, shall also have, and may exercise, relative to limited access facilities, any and all additional authority, now or hereafter vested in them relative to highways or streets within their respective jurisdictions, and may regulate, restrict, or prohibit the use of such limited access facilities by various classes of vehicles or traffic. Such highway authorities may reserve any limited access facility or portions thereof, including designated lanes or ramps for the exclusive or preferential use of (a) public transportation vehicles, (b) privately owned buses, (c) private motor vehicles carrying not less than a specified number of passengers, or (d) the following private transportation provider vehicles if the vehicle has the capacity to carry eight or more passengers, regardless of the number of passengers in the vehicle, and if such use does not interfere with the efficiency, reliability, and safety of public transportation operations: (i) Auto transportation company vehicles regulated under chapter 81.68 RCW; (ii) passenger charter carrier vehicles regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department of licensing rules; (iii) private nonprofit transportation provider vehicles regulated under chapter 81.66 RCW; and (iv) private employer transportation service vehicles, when such limitation will increase the efficient utilization of the highway facility or will aid in the conservation of energy resources. Regulations authorizing such exclusive or preferential use of a highway facility may be declared to be effective at all time or at specified times of day or on specified days.

(2) Any transit-only lanes that allow other vehicles to access abutting businesses that are reserved pursuant to subsection (1) of this section may not be authorized for the use of private transportation provider vehicles as described under subsection (1) of this section.

(3) Highway authorities of the state, counties, or incorporated cities and towns may prohibit the use of limited access facilities by the following private transportation provider vehicles: (a) Auto transportation company vehicles regulated under chapter 81.68 RCW; (b) passenger charter carrier vehicles regulated under chapter 81.70 RCW, and marked or unmarked limousines and stretch sport utility vehicles as defined under department of licensing rules; (c) private nonprofit transportation provider vehicles regulated under chapter 81.66 RCW; and (d) private employer transportation service vehicles, when the average transit speed in the high occupancy vehicle travel lane fails to meet department standards and falls below forty-five miles per hour at least ninety percent of the time during the peak hours for two consecutive months.

[2011 RCW Supp—page 1088]

(4)(a) Local authorities are encouraged to establish a process for private transportation providers, described under subsections (1) and (3) of this section, to apply for the use of limited access facilities that are reserved for the exclusive or preferential use of public transportation vehicles.

(b) The process must provide a list of facilities that the local authority determines to be unavailable for use by the private transportation provider and must provide the criteria used to reach that determination.

(c) The application and review processes must be uniform and should provide for an expeditious response by the authority.

(5) For the purposes of this section, "private employer transportation service" means regularly scheduled, fixed-route transportation service that is similarly marked or identified to display the business name or logo on the driver and passenger sides of the vehicle, meets the annual certification requirements of the department, and is offered by an employer for the benefit of its employees. [2011 c 379 § 3; 1974 ex.s. c 133 § 1; 1961 c 13 § 47.52.025. Prior: 1957 c 235 § 3; prior: 1951 c 167 § 5; 1947 c 202 § 2, part; Rem. Supp. 1947 § 6402-61, part.]

Conflict with state and federal environmental mitigation requirements—2011 c 379: See note following RCW 46.61.165.

High occupancy vehicle lanes: RCW 46.61.165.

Chapter 47.56 RCW

STATE TOLL BRIDGES, TUNNELS, AND FERRIES

Sections

47.56.403 High occupancy toll lane pilot project.
 47.56.796 Toll rates—Legislative approval—Adjustments—Reports.
 47.56.810 Definitions.
 47.56.876 State route number 520 civil penalties account.
 47.56.880 Interstate 405 corridor—Tolls authorized—Eligible toll facility—Toll rate schedule—Capacity improvements—Performance measures—Violation.
 47.56.884 Interstate 405 express toll lanes operations account.
 47.56.886 State route number 167 and Interstate 405 express toll lane system—Traffic and revenue analysis—Finance plan.

47.56.403 High occupancy toll lane pilot project. (1) The department may provide for the establishment, construction, and operation of a pilot project of high occupancy toll lanes on state route 167 high occupancy vehicle lanes within King county. The department may issue, buy, and redeem bonds, and deposit and expend them; secure and remit financial and other assistance in the construction of high occupancy toll lanes, carry insurance, and handle any other matters pertaining to the high occupancy toll lane pilot project.

(2) Tolls for high occupancy toll lanes will be established as follows:

(a) The schedule of toll charges for high occupancy toll lanes must be established by the transportation commission and collected in a manner determined by the commission.

(b) Toll charges shall not be assessed on transit buses and vanpool vehicles owned or operated by any public agency.

(c) The department shall establish performance standards for the state route 167 high occupancy toll lane pilot project. The department must automatically adjust the toll charge, using dynamic tolling, to ensure that toll-paying single-occupant vehicle users are only permitted to enter the

lane to the extent that average vehicle speeds in the lane remain above forty-five miles per hour at least ninety percent of the time during peak hours. The toll charge may vary in amount by time of day, level of traffic congestion within the highway facility, vehicle occupancy, or other criteria, as the commission may deem appropriate. The commission may also vary toll charges for single-occupant inherently low-emission vehicles such as those powered by electric batteries, natural gas, propane, or other clean burning fuels.

(d) The commission shall periodically review the toll charges to determine if the toll charges are effectively maintaining travel time, speed, and reliability on the highway facilities.

(3) The department shall monitor the state route 167 high occupancy toll lane pilot project and shall annually report to the transportation commission and the legislature on operations and findings. At a minimum, the department shall provide facility use data and review the impacts on:

- (a) Freeway efficiency and safety;
- (b) Effectiveness for transit;
- (c) Person and vehicle movements by mode;
- (d) Ability to finance improvements and transportation services through tolls; and

(e) The impacts on all highway users. The department shall analyze aggregate use data and conduct, as needed, separate surveys to assess usage of the facility in relation to geographic, socioeconomic, and demographic information within the corridor in order to ascertain actual and perceived questions of equitable use of the facility.

(4) The department shall modify the pilot project to address identified safety issues and mitigate negative impacts to high occupancy vehicle lane users.

(5) Authorization to impose high occupancy vehicle tolls for the state route 167 high occupancy toll pilot project expires if either of the following two conditions apply:

(a) If no contracts have been let by the department to begin construction of the toll facilities associated with this pilot project within four years of July 24, 2005; or

(b) If high occupancy vehicle tolls are being collected on June 30, 2013.

(6) The department of transportation shall adopt rules that allow automatic vehicle identification transponders used for electronic toll collection to be compatible with other electronic payment devices or transponders from the Washington state ferry system, other public transportation systems, or other toll collection systems to the extent that technology permits.

(7) The conversion of a single existing high occupancy vehicle lane to a high occupancy toll lane as proposed for SR-167 must be taken as the exception for this pilot project.

(8) A violation of the lane restrictions applicable to the high occupancy toll lanes established under this section is a traffic infraction.

(9) Procurement activity associated with this pilot project shall be open and competitive in accordance with chapter 39.29 RCW. [2011 c 367 § 709; 2005 c 312 § 3.]

Effective date—2011 c 367: See note following RCW 47.29.170.

Intent—Captions—2005 c 312: See notes following RCW 47.56.401.

47.56.796 Toll rates—Legislative approval—Adjustments—Reports. (1) Consistent with RCW 43.135.055 and 47.56.805 through 47.56.876, the legislature approves the action taken by the transportation commission on January 5, 2011, adopting amended rules to set the schedule of toll rates applicable to the state route number 520 corridor. The legislature further authorizes the transportation commission, as the tolling authority for the state, to set and adjust toll rates on the state route number 520 corridor in accordance with the authorization, requirements, and guidelines set forth in RCW 47.56.830, 47.56.850, and 47.56.870. The transportation commission may adjust the toll rates, as identified in the adopted schedule of toll rates, only in amounts not greater than those sufficient to meet (a) the operating costs of the state route number 520 corridor, including necessary maintenance, preservation, renewal, replacement, administration, and toll enforcement by public law enforcement and (b) obligations for the timely payment of debt service on bonds issued under chapter 498, Laws of 2009 and chapter 377, Laws of 2011, and any other associated financing costs including, but not limited to, required reserves, minimum debt coverage or other appropriate contingency funding, insurance, and compliance with all other financial and other covenants made by the state in the bond proceedings. Prior to the convening of each regular session of the legislature, the transportation commission must provide the transportation committees of the legislature with a detailed report regarding any increase or decrease in any toll rate approved by the commission that has not been described in a previous report provided pursuant to this subsection (1), along with a detailed justification for each such increase or decrease.

(2) Consistent with RCW 43.135.055 and 47.46.100, the legislature approves the action taken by the transportation commission on January 25, 2011, adopting amended rules to set the schedule of photo toll, or "pay by mail," charges applicable to the Tacoma Narrows bridge. Prior to the convening of each regular session of the legislature, the transportation commission must provide the transportation committees of the legislature with a detailed report regarding any increase or decrease in any toll rate approved by the commission that has not been described in a previous report provided pursuant to this subsection (2), along with a detailed justification for each such increase or decrease.

(3) Consistent with RCW 43.135.055 and 47.56.795(6), the legislature approves the action taken by the transportation commission on January 5, 2011, adopting amended rules concerning the assessment of administrative fees for toll collection processes. The administrative fees must not exceed toll collection costs. [2011 c 377 § 2.]

Effective date—2011 c 377: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2011]." [2011 c 377 § 8.]

47.56.810 Definitions. The definitions in this section apply throughout this subchapter unless the context clearly requires otherwise:

(1) "Eligible toll facility" or "eligible toll facilities" means portions of the state highway system specifically identified by the legislature including, but not limited to, transportation corridors, bridges, crossings, interchanges, on-

ramps, off-ramps, approaches, bistate facilities, and interconnections between highways.

(2) "Express toll lanes" means one or more high occupancy vehicle lanes of a highway in which the department charges tolls primarily as a means of regulating access to or use of the lanes to maintain travel speed and reliability.

(3) "Toll revenue" or "revenue from an eligible toll facility" means toll receipts, all interest income derived from the investment of toll receipts, and any gifts, grants, or other funds received for the benefit of transportation facilities in the state, including eligible toll facilities.

(4) "Tolling authority" means the governing body that is legally empowered to review and adjust toll rates. Unless otherwise delegated, the transportation commission is the tolling authority for all state highways. [2011 c 377 § 7; 2011 c 369 § 2; 2008 c 122 § 3.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2011 c 369 § 2 and by 2011 c 377 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 377: See note following RCW 47.56.796.

Intent—2011 c 369: See note following RCW 47.56.880.

47.56.876 State route number 520 civil penalties account. (1) A special account to be known as the state route number 520 civil penalties account is created in the state treasury. All state route number 520 bridge replacement and HOV program civil penalties generated from the nonpayment of tolls on the state route number 520 corridor must be deposited into the account, as provided under RCW 47.56.870(4)(b)(vii). Moneys in the account may be spent only after appropriation. Expenditures from the account may be used to fund any project within the state route number 520 bridge replacement and HOV program, including mitigation. During the 2011-2013 fiscal biennium, the legislature may transfer from the state route number 520 civil penalties account to the state route number 520 corridor account such amounts as reflect the excess fund balance of the state route number 520 civil penalties account. Funds transferred must be used solely for capital expenditures for the state route number 520 bridge replacement and HOV project (8BI1003).

(2) This section is contingent on the enactment by June 30, 2010, of either chapter 249, Laws of 2010 or *chapter . . . (Substitute House Bill No. 2897), Laws of 2010, but if the enacted bill does not designate the department as the toll penalty adjudicating agency, this section is null and void. [2011 c 367 § 720; 2010 c 248 § 5.]

***Reviser's note:** Substitute House Bill No. 2897 did not pass.

Effective date—2011 c 367: See note following RCW 47.29.170.

47.56.880 Interstate 405 corridor—Tolls authorized—Eligible toll facility—Toll rate schedule—Capacity improvements—Performance measures—Violation.

(1) The imposition of tolls for express toll lanes on Interstate 405 between the junctions with Interstate 5 on the north end and NE 6th Street in the city of Bellevue on the south end is authorized, Interstate 405 is designated an eligible toll facility, and toll revenue generated in the corridor must only be expended as allowed under RCW 47.56.820.

(2) Tolls for the express toll lanes must be set as follows:

(a) The schedule of toll rates must be set by the tolling authority pursuant to RCW 47.56.850. Toll rates may vary in amount by time of day, level of traffic congestion within the highway facility, or other criteria, as the tolling authority deems appropriate.

(b) In those locations with two express toll lanes in each direction, the toll rate must be the same in both lanes.

(c) Toll charges may not be assessed on transit buses and vanpools.

(d) The department shall establish performance standards for travel time, speed, and reliability for the express toll lanes project. The department must automatically adjust the toll rate within the schedule established by the tolling authority, using dynamic tolling, to ensure that average vehicle speeds in the lanes remain above forty-five miles per hour at least ninety percent of the time during peak hours.

(e) The tolling authority shall periodically review the toll rates against traffic performance of all lanes to determine if the toll rates are effectively maintaining travel time, speed, and reliability on the highway facilities.

(3) The department may construct and operate express toll lanes on Interstate 405 between the city of Bellevue on the south end and Interstate 5 on the north end. Operation of the express toll lanes may not commence until the department has completed capacity improvements necessary to provide a two-lane system from NE 6th Street in the city of Bellevue to state route number 522 and the conversion of the existing high occupancy vehicle lane to an express toll lane between state route number 522 and the city of Lynnwood. Construction of the capacity improvements described in this subsection, including items that enable implementation of express toll lanes such as conduit and other underground features, must begin as soon as practicable. However, any contract term regarding tolling equipment, such as gantries, barriers, or cameras, for Interstate 405 may not take effect unless specific appropriation authority is provided in 2012 stating that funding is provided solely for tolling equipment on Interstate 405. The department shall work with local jurisdictions to minimize and monitor impacts to local streets and, after consultation with local jurisdictions, recommend mitigation measures to the legislature in those locations where it is appropriate.

(4) The department shall monitor the express toll lanes project and shall annually report to the transportation commission and the legislature on the impacts from the project on the following performance measures:

(a) Whether the express toll lanes maintain speeds of forty-five miles per hour at least ninety percent of the time during peak periods;

(b) Whether the average traffic speed changed in the general purpose lanes;

(c) Whether transit ridership changed;

(d) Whether the actual use of the express toll lanes is consistent with the projected use;

(e) Whether the express toll lanes generated sufficient revenue to pay for all Interstate 405 express toll lane-related operating costs;

(f) Whether travel times and volumes have increased or decreased on adjacent local streets and state highways; and

(g) Whether the actual gross revenues are consistent with projected gross revenues as identified in the fiscal note for Engrossed House Bill No. 1382 distributed by the office of financial management on March 15, 2011.

(5) If after two years of operation of the express toll lanes on Interstate 405 performance measures listed in subsection (4)(a) and (e) of this section are not being met, the express toll lanes project must be terminated as soon as practicable.

(6) The department, in consultation with the transportation commission, shall consider making operational changes necessary to fix any unintended consequences of implementing the express toll lanes project.

(7) A violation of the lane restrictions applicable to the express toll lanes established under this section is a traffic infraction. [2011 c 369 § 3.]

Intent—2011 c 369: "The legislature recognizes that the Puget Sound region is faced with growing traffic congestion and has limited ability to expand freeway capacity due to financial, environmental, and physical constraints. Freeway high occupancy vehicle lanes have been an effective means of providing transit, vanpools, and carpools with a fast trip on congested freeway corridors, but in many cases, these lanes operate beyond their capacity during peak commute times.

It is the intent of the legislature to improve mobility for people and goods by maximizing the effectiveness of the freeway system. An express toll lanes network is one approach for managing the use of freeway high occupancy vehicle lanes and, at the same time, generating funds to improve the Interstate 405 and state route number 167 corridor. The legislature acknowledges that as one of the most congested freeway sections in the state, the combined Interstate 405 and state route number 167 corridor serves as an ideal candidate for the use of an express toll lanes network. An express toll lanes network could provide benefits for movement of vehicles and people, as well as having the potential to generate revenue for other improvements in the Interstate 405 and state route number 167 corridor, also known as the eastside corridor.

The legislature also recognizes the need for geographic balance and regional equity in decisions regarding tolling and pricing, and intends to consider the implementation of express toll lanes on other facilities in the region in the future. It is further the intent of the legislature to use its evaluation of initial express toll lanes on Interstate 405 to guide additions to the express toll lanes network, particularly in the most congested areas of the Interstate 405 and state route number 167 corridor, such as the Renton-to-Bellevue segment and the Interstate 405/state route number 167 interchange, with the ultimate goal of continuous express toll lanes from Puyallup to Lynnwood.

Therefore, it is the intent of this act to direct the department of transportation to develop and operate express toll lanes on Interstate 405 between the city of Bellevue on the south end and Interstate 5 on the north end and to conduct an evaluation of that project to determine the impacts on the movement of vehicles and people through the Interstate 405 and state route number 167 corridor, effectiveness for transit, carpools and single occupancy vehicles, and feasibility of financing capacity improvements through tolls." [2011 c 369 § 1.]

47.56.884 Interstate 405 express toll lanes operations account. The Interstate 405 express toll lanes operations account is created in the motor vehicle fund. All revenues received by the department as toll charges collected from Interstate 405 express toll lane users must be deposited into the account. Moneys in the account may be spent only after appropriation. Consistent with RCW 47.56.820, expenditures from the account may be used for debt service, planning, administration, construction, maintenance, operation, repair, rebuilding, enforcement, and the expansion of express toll lanes on Interstate 405. [2011 c 369 § 5.]

Intent—2011 c 369: See note following RCW 47.56.880.

47.56.886 State route number 167 and Interstate 405 express toll lane system—Traffic and revenue analysis—

Finance plan. (1)(a) The transportation commission shall retain appropriate independent experts and conduct a traffic and revenue analysis for the development of a forty-mile continuous express toll lane system that includes state route number 167 and Interstate 405. The analysis must include a review of the following variables within the express toll lane system:

(i) Vehicles with two or more occupants are exempt from payment;

(ii) Vehicles with three or more occupants are exempt from payment;

(iii) A variable fee; and

(iv) A flat rate fee.

(b) The department, in consultation with the transportation commission, shall develop a corridor-wide project management plan to develop a strategy for phasing the completion of improvements in the Interstate 405 and state route number 167 corridor.

(2) The department, in consultation with the transportation commission, shall use the information from the traffic and revenue analysis and the corridor-wide project management plan to develop a finance plan to fund improvements in the Interstate 405 and state route number 167 corridor. The department must include the following elements in the finance plan:

(a) Current state and federal funding contributions for projects in the Interstate 405 and state route number 167 corridor;

(b) A potential future state and federal funding contribution to leverage toll revenues;

(c) Financing mechanisms to optimize the revenue available for capacity improvements including, but not limited to, using the full faith and credit of the state;

(d) An express toll lane system operating in the Interstate 405 and state route number 167 corridor by 2014; and

(e) Completion of the capacity improvements in the Interstate 405 and state route number 167 corridor.

(3) The department and the transportation commission must consult with a committee consisting of local and state elected officials from the Interstate 405 and state route number 167 corridor and representatives from the transit agencies that operate in the Interstate 405 and state route number 167 corridor while developing the performance standards, traffic and revenue analysis, and finance plan.

(4) The transportation commission must provide the traffic and revenue analysis plan, and the department must provide the finance plan, to the governor and the legislature by January 2012. The department shall provide technical and other support as requested by the transportation commission to complete the plans identified in this subsection. Funds from Interstate 405 capital project appropriations may be used by the transportation commission through an inter-agency agreement with the department to cover the cost of the plans identified in this subsection.

(5) The department shall conduct ongoing education and outreach to ensure public awareness of the express toll lane system. [2011 c 369 § 4.]

Intent—2011 c 369: See note following RCW 47.56.880.

Chapter 47.60 RCW
PUGET SOUND FERRY AND
TOLL BRIDGE SYSTEM

Sections

47.60.315	Fares and pricing policies—Adoption schedule—Revenues—Vessel replacement surcharge.
47.60.322	Capital vessel replacement account—Transfer prohibition.
47.60.530	Puget Sound ferry operations account.

47.60.315 Fares and pricing policies—Adoption schedule—Revenues—Vessel replacement surcharge. (1) The commission shall adopt fares and pricing policies by rule, under chapter 34.05 RCW, according to the following schedule:

(a) Each year the department shall provide the commission a report of its review of fares and pricing policies, with recommendations for the revision of fares and pricing policies for the ensuing year;

(b) By September 1st of each year, beginning in 2008, the commission shall adopt by rule fares and pricing policies for the ensuing year.

(2) The commission may adopt by rule fares that are effective for more or less than one year for the purposes of transitioning to the fare schedule in subsection (1) of this section.

(3) The commission may increase ferry fares included in the schedule of charges adopted under this section by a percentage that exceeds the fiscal growth factor.

(4) The chief executive officer of the ferry system may authorize the use of promotional, discounted, and special event fares to the general public and commercial enterprises for the purpose of maximizing capacity use and the revenues collected by the ferry system. The department shall report to the commission a summary of the promotional, discounted, and special event fares offered during each fiscal year and the financial results from these activities.

(5) Fare revenues and other revenues deposited in the Puget Sound ferry operations account created in RCW 47.60.530 may not be used to support the Puget Sound capital construction account created in RCW 47.60.505, unless the support for capital is separately identified in the fare.

(6) The commission may not raise fares until the fare rules contain pricing policies developed under RCW 47.60.290, or September 1, 2009, whichever is later.

(7) The commission shall impose a vessel replacement surcharge of twenty-five cents on every one-way and round-trip ferry fare sold, including multiride and monthly pass fares. This surcharge must be clearly indicated to ferry passengers and drivers and, if possible, on the fare media itself. [2011 1st sp.s. c 16 § 3; 2007 c 512 § 6.]

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.322 Capital vessel replacement account—Transfer prohibition. (1) The capital vessel replacement account is created in the motor vehicle fund. All revenues generated from the vessel replacement surcharge under RCW 47.60.315(7) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the construction

or purchase of ferry vessels and to pay the principal and interest on bonds authorized for the construction or purchase of ferry vessels. However, expenditures from the account must first be used to support the construction or purchase, including any applicable financing costs, of a ferry vessel with a carrying capacity of at least one hundred forty-four cars.

(2) The state treasurer may not transfer any moneys from the capital vessel replacement account except to the transportation 2003 account (nickel account) for debt service on bonds issued for the construction of a 144-car class ferry vessel. [2011 1st sp.s. c 16 § 2.]

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

47.60.530 Puget Sound ferry operations account. (1) The Puget Sound ferry operations account is created in the motor vehicle fund.

(2) The following funds must be deposited into the account:

(a) All moneys directed by law;

(b) All revenues generated from ferry fares; and

(c) All revenues generated from commercial advertising, concessions, parking, and leases as allowed under RCW 47.60.140.

(3) Moneys in the account may be spent only after appropriation.

(4) Expenditures from the account may be used only for the maintenance, administration, and operation of the Washington state ferry system. [2011 1st sp.s. c 16 § 1; 1979 c 27 § 4; 1972 ex.s. c 24 § 3.]

Effective date—2011 1st sp.s. c 16 §§ 1-15: "Sections 1 through 15 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 7, 2011]." [2011 1st sp.s. c 16 § 30.]

Additional notes found at www.leg.wa.gov

Chapter 47.64 RCW
MARINE EMPLOYEES—
PUBLIC EMPLOYMENT RELATIONS

Sections

47.64.011	Definitions.
47.64.080	Repealed. (<i>Effective July 1, 2013.</i>)
47.64.090	Other party operating ferry by rent, lease, or charter—Passenger-only ferry service.
47.64.120	Scope of negotiations—Interest on retroactive compensation increases—Prohibitions—Agreement conflicts.
47.64.130	Unfair labor practices.
47.64.132	Unfair labor practice procedures—Powers and duties of commission. (<i>Effective July 1, 2013.</i>)
47.64.135	Representation—Elections—Rules. (<i>Effective July 1, 2013.</i>)
47.64.150	Repealed. (<i>Effective July 1, 2013.</i>)
47.64.170	Collective bargaining procedures.
47.64.270	Insurance and health care.
47.64.280	Marine employees' commission—Complaint and dispute procedure. (<i>Expires June 30, 2013.</i>)
47.64.300	Interest arbitration—Procedures.
47.64.340	Ferry vessel captains—Authority, responsibilities—Collective bargaining.
47.64.350	Ferry system performance measures and targets—Definitions.
47.64.355	Ferry system performance measures and targets—Ad hoc committee.
47.64.360	Ferry system performance measures and targets—Reports.

47.64.011 Definitions. As used in this chapter, unless the context otherwise requires, the definitions in this section shall apply.

(1) "Collective bargaining representative" means the persons designated by the governor and employee organizations to be the exclusive representatives during collective bargaining negotiations.

(2) "Commission" means the public employment relations commission created in RCW 41.58.010.

(3) "Department of transportation" means the department as defined in RCW 47.01.021.

(4) "Employer" means the state of Washington.

(5) "Executive director" means the executive director of the commission.

(6) "Ferry employee" means any employee of the marine transportation division of the department of transportation who is a member of a collective bargaining unit represented by a ferry employee organization and does not include an exempt employee pursuant to RCW 41.06.079.

(7) "Ferry employee organization" means any labor organization recognized to represent a collective bargaining unit of ferry employees.

(8) "Lockout" means the refusal of the employer to furnish work to ferry employees in an effort to get ferry employee organizations to make concessions during collective bargaining, grievance, or other labor relation negotiations. Curtailment of employment of ferry employees due to lack of work resulting from a strike or work stoppage shall not be considered a lockout.

(9) "Office of financial management" means the office as created in RCW 43.41.050.

(10) "Strike or work stoppage" means a ferry employee's refusal, in concerted action with others, to report to duty, or his or her willful absence from his or her position, or his or her stoppage or slowdown of work, or his or her abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in conditions, compensation, rights, privileges, or obligations of his, her, or any other ferry employee's employment. A refusal, in good faith, to work under conditions which pose an endangerment to the health and safety of ferry employees or the public, as determined by the master of the vessel, shall not be considered a strike for the purposes of this chapter. [2011 1st sp.s. c 16 § 24; 2006 c 164 § 1; 1983 c 15 § 2.]

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.065.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.065.

Prospective application—Savings—2006 c 164: "(1) This act applies prospectively only and not retroactively. It applies to collective bargaining agreements, the negotiations of collective bargaining agreements, mediations, arbitrations, and other actions under this act that arise or are commenced on or after March 21, 2006.

(2) This act does not apply to collective bargaining agreements, either in effect or for which the negotiations have begun, or mediations and arbitrations that arose or commenced under *this chapter before March 21, 2006. Such collective bargaining agreements and related proceedings must be administered in accordance with the authorities, rules, and procedures that were established under *this chapter as it existed before March 21, 2006. The repealers in section 19 of this act do not affect any existing right acquired, or liability or obligation incurred, under the statutes repealed or under any rule or order adopted under those statutes, nor do they affect any proceeding instituted under them." [2006 c 164 § 16.]

***Reviser's note:** The term "this chapter" apparently refers to chapter 47.64 RCW.

Effective dates—2006 c 164: "Except for section 10 of this act which takes effect July 1, 2006, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 21, 2006]." [2006 c 164 § 21.]

47.64.080 Repealed. (Effective July 1, 2013.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

47.64.090 Other party operating ferry by rent, lease, or charter—Passenger-only ferry service. (1) Except as provided in RCW 47.60.656 and subsections (2) and (4) of this section, or as provided in RCW 36.54.130 and subsection (3) of this section, if any party assumes the operation and maintenance of any ferry or ferry system by rent, lease, or charter from the department of transportation, such party shall assume and be bound by all the provisions herein and any agreement or contract for such operation of any ferry or ferry system entered into by the department shall provide that the wages to be paid, hours of employment, working conditions, and seniority rights of employees will be established by the commission in accordance with the terms and provisions of this chapter and it shall further provide that all labor disputes shall be adjudicated in accordance with chapter 47.64 RCW.

(2) If a public transportation benefit area meeting the requirements of RCW 36.57A.200 has voter approval to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase passenger-only vessels, related equipment, or terminal space for purposes of loading and unloading the passenger-only ferry. Charges for the vessels, equipment, and space must be fair market value taking into account the public benefit derived from the ferry service. A benefit area or subcontractor of that benefit area that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to:

(a) The terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors' employees under chapter 41.56 RCW or the National Labor Relations Act, as applicable;

(b) Unless otherwise prohibited by federal or state law, a requirement that the benefit area and any contract with its subcontractors, give preferential hiring to former employees of the department of transportation who separated from employment with the department because of termination of the ferry service by the state of Washington; and

(c) Unless otherwise prohibited by federal or state law, a requirement that the benefit area and any contract with its subcontractors, on any questions concerning representation of employees for collective bargaining purposes, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer.

(3) If a ferry district is formed under RCW 36.54.110 to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or

purchase vessels, related equipment, or terminal space for purposes of loading and unloading the ferry. Charges for the vessels, equipment, and space must be fair market value taking into account the public benefit derived from the ferry service. A ferry district or subcontractor of that district that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to:

(a) The terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors' employees under chapter 41.56 RCW or the National Labor Relations Act, as applicable;

(b) Unless otherwise prohibited by federal or state law, a requirement that the ferry district and any contract with its subcontractors, give preferential hiring to former employees of the department of transportation who separated from employment with the department because of termination of the ferry service by the state of Washington; and

(c) Unless otherwise prohibited by federal or state law, a requirement that the ferry district and any contract with its subcontractors, on any questions concerning representation of employees for collective bargaining purposes, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer.

(4) The department of transportation shall make its terminal, dock, and pier space available to private operators of passenger-only ferries if the space can be made available without limiting the operation of car ferries operated by the department. These private operators are not bound by the provisions of subsection (1) of this section. Charges for the equipment and space must be fair market value taking into account the public benefit derived from the passenger-only ferry service. [2011 1st sp.s. c 16 § 25. Prior: 2003 c 373 § 3; 2003 c 91 § 1; 2003 c 83 § 205; 1983 c 15 § 27; 1961 c 13 § 47.64.090; prior: 1949 c 148 § 8; Rem. Supp. 1949 § 6524-29.]

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.065.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.065.

Findings—Intent—2003 c 373: "The legislature finds that the Washington state department of transportation should focus on its core ferry mission of moving automobiles on Washington state's marine highways. The legislature finds that current statutes impose barriers to entities other than the state operating passenger-only ferries. The legislature intends to lift those barriers to allow entities other than the state to provide passenger-only ferry service. The legislature finds that the provision of this service and the improvement in the mobility of the citizens of Washington state is legally adequate consideration for the use of state facilities in conjunction with the provision of the service, and the legislature finds that allowing the operators of passenger-only ferries to use state facilities on the basis of legally adequate consideration does not evince donative intent on the part of the legislature." [2003 c 373 § 1.]

Contingent effective date—2003 c 91: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 23, 2003], but only if Engrossed Substitute House Bill No. 1853 has become law. If Engrossed Substitute House Bill No. 1853 has not become law by June 30, 2003, sections 1 and 2 of this act are null and void." [2003 c 91 § 4.] Engrossed Substitute House Bill No. 1853 became law as 2003 c 83, effective April 23, 2003.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

[2011 RCW Supp—page 1094]

Additional notes found at www.leg.wa.gov

47.64.120 Scope of negotiations—Interest on retroactive compensation increases—Prohibitions—Agreement conflicts. (1) Except as otherwise provided in this chapter, the employer and ferry system employee organizations, through their collective bargaining representatives, shall meet at reasonable times to negotiate in good faith with respect to wages, hours, working conditions, and insurance, and other matters mutually agreed upon. Employer funded retirement benefits shall be provided under the public employees retirement system under chapter 41.40 RCW and shall not be included in the scope of collective bargaining. Except as provided under RCW 47.64.270, the employer is not required to bargain over health care benefits. Any retirement system or retirement benefits shall not be subject to collective bargaining.

(2) Upon ratification of bargaining agreements, ferry employees are entitled to an amount equivalent to the interest earned on retroactive compensation increases. For purposes of this section, the interest earned on retroactive compensation increases is the same monthly rate of interest that was earned on the amount of the compensation increases while held in the state treasury. The interest will be computed for each employee until the date the retroactive compensation is paid, and must be allocated in accordance with appropriation authority. The interest earned on retroactive compensation is not considered part of the ongoing compensation obligation of the state and is not compensation earnable for the purposes of chapter 41.40 RCW. Negotiations shall also include grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties.

(3) The employer shall not bargain over the rights of management as identified in RCW 41.80.040.

(4) A collective bargaining agreement may not contain any provision that extends the term of an existing collective bargaining agreement or applicability of items incompatible with this section in an existing collective bargaining agreement.

(5) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and conditions of employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable. [2011 1st sp.s. c 16 § 7; 2010 c 283 § 10; 2006 c 164 § 3; 1997 c 436 § 1; 1983 c 15 § 3.]

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

Findings—Intent—Effective date—Management review of ferries division—Assaults on Washington state ferries employees—2010 c 283: See notes following RCW 47.60.355.

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

47.64.130 Unfair labor practices. (1) It is an unfair labor practice for the employer or its representatives:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it. However, subject to rules made by the public employment relations commission pursuant to RCW 41.58.050, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure of employment, or any term or condition of employment, but nothing contained in this subsection prevents an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 47.64.160. However, nothing prohibits the employer from agreeing to obtain employees by referral from a lawful hiring hall operated by or participated in by a labor organization;

(d) To discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed by this chapter. However, this subsection does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or (ii) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer.

(3) The expression of any view, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if the expression contains no threat of reprisal or force or promise of benefit. [2011 1st sp.s. c 16 § 19; 2010 c 8 § 10021; 2006 c 164 § 4; 1983 c 15 § 4.]

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.065.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.065.

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

47.64.132 Unfair labor practice procedures—Powers and duties of commission. (Effective July 1, 2013.) (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders; however, a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation, or conciliation in labor disputes that have been or may hereafter be established by law.

(2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or in which the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief. [2011 1st sp.s. c 16 § 26.]

Effective date—2011 1st sp.s. c 16 §§ 26-28: "Sections 26 through 28 of this act take effect July 1, 2013." [2011 1st sp.s. c 16 § 32.]

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.065.

47.64.135 Representation—Elections—Rules. (Effective July 1, 2013.) (1) The commission shall determine all questions pertaining to representation and shall administer all elections and be responsible for the processing and adjudication of all disputes that arise as a consequence of elections. The commission shall adopt rules that provide for at least the following:

- (a) Secret balloting;
- (b) Consulting with employee organizations;
- (c) Access to lists of employees, job classification, work locations, and home mailing addresses;
- (d) Absentee voting;
- (e) Procedures for the greatest possible participation in voting;
- (f) Campaigning on the employer's property during working hours; and
- (g) Election observers.

(2) If an employee organization has been certified as the exclusive bargaining representative of the employees of a bargaining unit, the employee organization may act for and negotiate master collective bargaining agreements that will include within the coverage of the agreement all employees in the bargaining unit.

(3) The certified exclusive bargaining representative is responsible for representing the interests of all the employees in the bargaining unit. This section shall not be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.

(4) No question concerning representation may be raised if:

- (a) Fewer than twelve months have elapsed since the last certification or election; or
- (b) A valid collective bargaining agreement exists covering the unit, except for that period of no more than one hundred twenty calendar days and no less than ninety calendar days before the expiration of the contract. [2011 1st sp.s. c 16 § 27.]

Effective date—2011 1st sp.s. c 16 §§ 26-28: See note following RCW 47.64.132.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.065.

47.64.150 Repealed. (*Effective July 1, 2013.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

47.64.170 Collective bargaining procedures. (1) Any ferry employee organization certified as the bargaining representative shall be the exclusive representative of all ferry employees in the bargaining unit and shall represent all such employees fairly.

(2) A ferry employee organization or organizations and the governor may each designate any individual as its representative to engage in collective bargaining negotiations.

(3) Negotiating sessions, including strategy meetings of the employer or employee organizations, mediation, and the deliberative process of arbitrators are exempt from the provisions of chapter 42.30 RCW. Hearings conducted by arbitrators may be open to the public by mutual consent of the parties.

(4) Terms of any collective bargaining agreement may be enforced by civil action in Thurston county superior court upon the initiative of either party.

(5) Ferry system employees or any employee organization shall not negotiate or attempt to negotiate directly with anyone other than the person who has been appointed or authorized a bargaining representative for the purpose of bargaining with the ferry employees or their representative.

(6)(a) Within ten working days after the first Monday in September of every odd-numbered year, the parties shall attempt to agree on an interest arbitrator to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. If the parties cannot agree on an arbitrator within the ten-day period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. The parties shall select an interest arbitrator using the coin toss/alternate strike method within thirty calendar days of receipt of the list. Immediately upon selecting an interest arbitrator, the parties shall cooperate to reserve dates with the arbitrator for potential arbitration between August 1st and September 15th of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1st of each odd-numbered year setting forth the name of the arbitrator and the dates reserved for bargaining and arbitration. This subsection (6)(a) imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(b) The negotiation of a proposed collective bargaining agreement by representatives of the employer and a ferry employee organization shall commence on or about February 1st of every even-numbered year.

(c) For negotiations covering the 2009-2011 biennium and subsequent biennia, the time periods specified in this section, and in RCW 47.64.210 and 47.64.300 through 47.64.320, must ensure conclusion of all agreements on or before October 1st of the even-numbered year next preceding the biennial budget period during which the agreement should take effect. These time periods may only be altered by mutual agreement of the parties in writing. Any such agreement and any impasse procedures agreed to by the parties

under RCW 47.64.200 must include an agreement regarding the new time periods that will allow final resolution by negotiations or arbitration by October 1st of each even-numbered year.

(7) It is the intent of this section that the collective bargaining agreement or arbitrator's award shall commence on July 1st of each odd-numbered year and shall terminate on June 30th of the next odd-numbered year to coincide with the ensuing biennial budget year, as defined by RCW 43.88.020(7), to the extent practical. It is further the intent of this section that all collective bargaining agreements be concluded by October 1st of the even-numbered year before the commencement of the biennial budget year during which the agreements are to be in effect. After the expiration date of a collective bargaining agreement negotiated under this chapter, except to the extent provided in subsection (11) of this section and RCW 47.64.270(4), all of the terms and conditions specified in the collective bargaining agreement remain in effect until the effective date of a subsequently negotiated agreement, not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(8) The office of financial management shall conduct a salary survey, for use in collective bargaining and arbitration, which must be conducted through a contract with a firm nationally recognized in the field of human resources management consulting.

(9) Except as provided in subsection (11) of this section:

(a) The governor shall submit a request either for funds necessary to implement the collective bargaining agreements including, but not limited to, the compensation and fringe benefit provisions or for legislation necessary to implement the agreement, or both. Requests for funds necessary to implement the collective bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

(i) Have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered; and

(ii) Have been certified by the director of the office of financial management as being feasible financially for the state.

(b) The governor shall submit a request either for funds necessary to implement the arbitration awards or for legislation necessary to implement the arbitration awards, or both. Requests for funds necessary to implement the arbitration awards shall not be submitted to the legislature by the governor unless such requests:

(i) Have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered; and

(ii) Have been certified by the director of the office of financial management as being feasible financially for the state.

(c) The legislature shall approve or reject the submission of the request for funds necessary to implement the collective bargaining agreements or arbitration awards as a whole for each agreement or award. The legislature shall not consider a request for funds to implement a collective bargaining agreement or arbitration award unless the request is transmitted to the legislature as part of the governor's budget docu-

ment submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement and award or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 47.64.210 and 47.64.300.

(10) If, after the compensation and fringe benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(11)(a) For the collective bargaining agreements negotiated for the 2011-2013 fiscal biennium, the legislature may consider a request for funds to implement a collective bargaining agreement even if the request for funds was not received by the office of financial management by October 1st and was not transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060.

(b) For the 2011-2013 fiscal biennium, a collective bargaining agreement related to employee health care benefits negotiated between the employer and coalition pursuant to RCW 41.80.020(3) regarding the dollar amount expended on behalf of each employee must be a separate agreement for which the governor may request funds necessary to implement the agreement. If such an agreement is negotiated and funded by the legislature, this agreement will supersede any terms and conditions of an expired 2009-2011 biennial master collective bargaining agreement under this chapter regarding health care benefits. [2011 c 367 § 712; 2010 c 283 § 11; 2007 c 160 § 1; 2006 c 164 § 6; 1983 c 15 § 8.]

Effective date—2011 c 367: See note following RCW 47.29.170.

Findings—Intent—Effective date—Management review of ferries division—Assaults on Washington state ferries employees—2010 c 283: See notes following RCW 47.60.355.

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

47.64.270 Insurance and health care. (1) The employer and one coalition of all the exclusive bargaining representatives subject to this chapter and chapter 41.80 RCW shall conduct negotiations regarding the dollar amount expended on behalf of each employee for health care benefits.

(2) Absent a collective bargaining agreement to the contrary, the department of transportation shall provide contributions to insurance and health care plans for ferry system employees and dependents, as determined by the state health care authority, under chapter 41.05 RCW.

(3) The employer and employee organizations may collectively bargain for insurance plans other than health care benefits, and employer contributions may exceed that of other state agencies as provided in RCW 41.05.050.

(4) For the 2011-2013 fiscal biennium, a collective bargaining agreement related to employee health care benefits negotiated between the employer and coalition pursuant to RCW 41.80.020(3) regarding the dollar amount expended on behalf of each employee must be a separate agreement for which the governor may request funds necessary to imple-

ment the agreement. If such an agreement is negotiated and funded by the legislature, this agreement will supersede any terms and conditions of an expired 2009-2011 biennial collective bargaining agreement under this chapter regarding health care benefits. [2011 c 367 § 713; 2010 c 283 § 13; 2006 c 164 § 17; 1995 1st sp.s. c 6 § 6; 1993 c 492 § 224; 1988 c 107 § 21; 1987 c 78 § 2; 1983 c 15 § 18.]

Effective date—2011 c 367: See note following RCW 47.29.170.

Findings—Intent—Effective date—Management review of ferries division—Assaults on Washington state ferries employees—2010 c 283: See notes following RCW 47.60.355.

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1987 c 78: "The legislature finds that the provisions of RCW 47.64.270 have been subject to misinterpretation. The objective of this act is to clarify the intent of RCW 47.64.270 as originally enacted." [1987 c 78 § 1.]

Additional notes found at www.leg.wa.gov

47.64.280 Marine employees' commission—Complaint and dispute procedure. (Expires June 30, 2013.)

(1) The marine employees' commission, created in RCW 41.58.065, shall adjust all complaints, grievances, and disputes between labor and management arising out of the operation of the ferry system as provided in *RCW 47.64.150.

(2) All unfair labor practice complaints, questions concerning representation, and unit clarifications must be filed with the public employment relations commission and processed in accordance with the commission's rules adopted under RCW 41.58.050, except that the marine employees' commission shall act in place of the public employment relations commission only for appeals.

(3) This section expires June 30, 2013. [2011 1st sp.s. c 16 § 20; 2010 c 283 § 14; 2006 c 164 § 18; 1984 c 287 § 95; 1983 c 15 § 19.]

***Reviser's note:** RCW 47.64.150 was repealed by 2011 1st sp.s. c 16 § 28, effective July 1, 2013.

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.065.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.065.

Findings—Intent—Effective date—Management review of ferries division—Assaults on Washington state ferries employees—2010 c 283: See notes following RCW 47.60.355.

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Compensation of class four groups: RCW 43.03.250.

47.64.300 Interest arbitration—Procedures. (1) If an agreement has not been reached following a reasonable period of negotiations and, when applicable, mediation, upon the recommendation of the assigned mediator that the parties remain at impasse or, with respect to biennial bargaining, in compliance with the interest arbitration agreement under RCW 47.64.170(6)(a), all impasse items shall be submitted to arbitration under this section. The issues for arbitration shall be limited to the issues certified by the executive director.

(2) The parties may agree to submit the dispute to a single arbitrator, whose authority and duties shall be the same as

those of an arbitration panel. If the parties cannot agree on the arbitrator within five working days, the selection shall be made under subsection (3) of this section, except with respect to biennial bargaining described under RCW 47.64.170(6). The full costs of arbitration under this section shall be shared equally by the parties to the dispute.

(3) Within seven days following the issuance of the determination of the executive director, each party shall, absent an agreement to the contrary, name one person to serve as its arbitrator on the arbitration panel. Except with respect to biennial bargaining described under RCW 47.64.170(6), the two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, either party may apply to the federal mediation and conciliation service, or, with the consent of the parties, the American arbitration association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties.

(4) In consultation with the parties, the arbitrator or arbitration panel shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. The parties shall exchange final positions in writing, with copies to the arbitrator or arbitration panel, with respect to every issue to be arbitrated, on a date mutually agreed upon, but in no event later than ten working days before the date set for hearing. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chair of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof.

(5) The neutral chair shall consult with the other members of the arbitration panel, if a panel has been created. Within thirty days following the conclusion of the hearing, or sooner as the October 1st deadline set forth in RCW 47.64.170 (6)(c) and (7) necessitates, the neutral chair shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on each of the other members of

the arbitration panel, and on each of the parties to the dispute. That determination is final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious. [2011 1st sp.s. c 16 § 21; 2007 c 160 § 4; 2006 c 164 § 12.]

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.065.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.065.

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

47.64.340 Ferry vessel captains—Authority, responsibilities—Collective bargaining. (1) The captain of a Washington state ferry vessel, also known as the master of a vessel or the commanding officer, is the ultimate authority on, manager of, and has responsibility for the entire vessel and its Washington state ferries personnel while it is in service. The captain's responsibilities include, but are not limited to:

- (a) Ensuring the safe navigation of the vessel and its crew and passengers;
- (b) Following all applicable federal, state, and agency policies and regulations;
- (c) Supervising crew in performance, operations, training, security, and environmental protection;
- (d) Overseeing all aspects of vessel operations;
- (e) Ensuring that the vessel operations and its Washington state ferries personnel satisfy performance expectations set forth by the department; and
- (f) Managing vessel arrivals and departures, as well as all other vessel operations while the vessel is in service.

(3) [(2)] Effective July 1, 2013, the public employment relations commission shall sever from the masters, mates, and pilots bargaining unit all captains. By August 31, 2011, if a majority of the captains in the masters, mates, and pilots bargaining unit indicate by vote that they desire to be included in a newly formed captains-only bargaining unit, the public employment relations commission shall certify a captains-only bargaining unit, to be effective July 1, 2013. For the vote described in this subsection, a union seeking to represent captains does not have to demonstrate a showing of interest to be included on a ballot. Notwithstanding the results of a vote, captains shall remain a part of the masters, mates, and pilots bargaining unit through June 30, 2013.

(4) [(3)] If a new captains-only bargaining unit is created, the employer and the exclusive bargaining representative for the captains-only bargaining unit must negotiate a collective bargaining agreement exclusive to the captains-only bargaining unit.

(5) [(4)] Beginning with negotiations covering the 2013-2015 biennium, the employer and the exclusive bargaining representative of the captains-only bargaining unit must negotiate agreements that are consistent with this section.

(6) [(5)] A collective bargaining agreement may not contain any provision that extends the term of an existing collective bargaining agreement or applicability of items incompatible with this section in an existing collective bargaining agreement. [2011 1st sp.s. c 16 § 8.]

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

47.64.350 Ferry system performance measures and targets—Definitions. For the purposes of this section and *sections 10 through 15 of this act:

(1) "Management" means an employee at the Washington state ferries who is part of Washington management services or is exempt.

(2) "Performance measure" means measurable standards to be used by the department to evaluate the sufficiency of the services being provided to ferry riders.

(3) "Performance report" means a report that summarizes ferry system performance using the performance measures identified in RCW 47.64.355 and *section 11 of this act.

(4) "Performance target" means the desired outcome of a performance measure. [2011 1st sp.s. c 16 § 9.]

***Reviser's note:** Sections 10 and 12 of this act were codified as RCW 47.64.355 and 47.64.360, respectively. Sections 11, 13, 14, and 15 of this act were vetoed by the governor.

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

47.64.355 Ferry system performance measures and targets—Ad hoc committee. Performance targets must be established by an ad hoc committee with members from and designated by the office of the governor, which must include at least one member from labor. The committee may not consist of more than eleven members. By December 31, 2011, the committee shall present performance targets to the representatives of the legislative transportation committees and the joint transportation committee for review of the performance measures listed under this section. The committee may also develop performance measures in addition to the following:

(1) Safety performance as measured by passenger injuries per one million passenger miles and by injuries per ten thousand revenue service hours that are recordable by standards of the federal occupational safety and health administration and related to standard operating procedures;

(2) Service effectiveness measures including, but not limited to, passenger satisfaction of interactions with ferry employees, cleanliness and comfort of vessels and terminals, and satisfactory response to requests for assistance. Passenger satisfaction must be measured by an evaluation that is created by a contracted market research company and conducted by the Washington state transportation commission as part of the ferry riders' opinion group survey. The Washington state transportation commission shall, to the extent possible, integrate the passenger satisfaction evaluation into the ferry user data survey described in RCW 47.60.286;

(3) Cost-containment measures including, but not limited to, operating cost per passenger mile, operating cost per revenue service mile, discretionary overtime as a percentage of straight time, and gallons of fuel consumed per revenue service mile; and

(4) Maintenance and capital program effectiveness measures including, but not limited to: Project delivery rate as measured by the number of projects completed on time and within the omnibus transportation appropriations act; vessel and terminal design and engineering costs as measured by a percentage of the total capital program, including measure-

ment of the ongoing operating and maintenance costs; and total vessel out-of-service time.

The ad hoc committee described in subsection (1) of this section expires December 31, 2011. [2011 1st sp.s. c 16 § 10.]

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

47.64.360 Ferry system performance measures and targets—Reports. (1) The office of financial management shall complete a government management and accountability performance report that provides a baseline assessment of current performance on the performance measures identified in RCW 47.64.355 and *section 11 of this act using final 2009-2011 data. This report must be presented to the legislature by November 1, 2011, through the attainment report required in RCW 47.01.071(5) and 47.04.280.

(2) By December 31, 2012, and each year thereafter, the office of financial management shall complete a performance report for the prior fiscal year. This report must be reviewed by the joint transportation committee.

(3) Management shall lead implementation of the performance measures in RCW 47.64.355 and *section 11 of this act. [2011 1st sp.s. c 16 § 12.]

***Reviser's note:** Section 11 of this act was vetoed by the governor.

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

Chapter 47.66 RCW

MULTIMODAL TRANSPORTATION PROGRAMS

Sections

47.66.100 Rural mobility grant program.

47.66.100 Rural mobility grant program. (1) The department shall establish a rural mobility grant program. The purpose of the grant program is to aid small cities and rural areas, as identified in the "Summary of Public Transportation - 2008" published by the department or subsequent versions published by the department.

(a) Fifty percent of the money appropriated for the rural mobility grant program must go to noncompetitive grants that must be distributed to the transit systems serving small cities and rural areas in a manner similar to past disparity equalization programs.

(b) Fifty percent of the money appropriated for the rural mobility grant program must go to competitive grants to providers of rural mobility service in areas not served or underserved by transit agencies.

(2) The department may establish an advisory committee to carry out the mandates of this section.

(3) The department must report annually to the transportation committees of the legislature on the status of any grants projects funded by the program created under this section.

(4) During the 2011-2013 fiscal biennium, the department shall, with money appropriated for the competitive grants program under subsection (1)(b) of this section, implement a pilot project to provide agricultural workers with enhanced transit opportunities through the establishment of one or more vanpool programs. The pilot project must, at a

minimum, provide appropriate vehicles, insurance, and maintenance, and may charge an appropriate fee, as determined by the department, to the riders in a vanpool. [2011 c 272 § 2.]

Chapter 47.68 RCW AERONAUTICS

Sections

47.68.090 Aid to municipalities, Indian tribes, persons—Federal aid.

47.68.090 Aid to municipalities, Indian tribes, persons—Federal aid. (1) The department of transportation may make available its engineering and other technical services, with or without charge, to any municipality or person desiring them in connection with the planning, acquisition, construction, improvement, maintenance, or operation of airports or air navigation facilities.

(2)(a) The department may render financial assistance by grant or loan, or both, to the following entities out of appropriations made by the legislature for the following purposes:

(i) Any municipality or municipalities acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport owned or controlled, or to be owned or controlled by such municipality or municipalities;

(ii) Any Indian tribe recognized as such by the federal government or such tribes acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport, owned or controlled, or to be owned or controlled by such tribe or tribes, and to be held available for the general use of the public; or

(iii) Any person or persons acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport, owned or controlled, or to be owned or controlled by such person or persons, and to be held available for the general use of the public.

(b) Such financial assistance may be furnished in connection with federal or other financial aid for the same purposes: PROVIDED, That no grant or loan, or both, shall be in excess of two hundred fifty thousand dollars, or five hundred thousand dollars during the 2009-2011 fiscal biennium, for any one project: PROVIDED FURTHER, That no grant or loan, or both, shall be granted unless the municipality or municipalities acting jointly, the tribe or tribes acting jointly, or the person or persons acting jointly shall from their own funds match any funds made available by the department upon such ratio as the department may prescribe.

(c) The department must establish, by rule, criteria for administering financial assistance to any entity.

(3) The department is authorized to act as agent of any municipality or municipalities acting jointly, any tribe or tribes acting jointly, or any person or persons acting jointly upon the request of such municipality or municipalities, tribe or tribes, or person or persons in accepting, receiving, receipting for, and disbursing federal moneys, and other moneys public or private, made available to finance, in whole or in part, the planning, acquisition, construction, improvement, maintenance, or operation of an airport or air navigation facility; and if requested by such municipality or municipalities, tribe or tribes, or person or persons, may act as its or

their agent in contracting for and supervising such planning, acquisition, construction, improvement, maintenance, or operation; and all municipalities, tribes, and persons are authorized to designate the department as their agent for the foregoing purposes. The department, as principal on behalf of the state, and any municipality on its own behalf, may enter into any contracts, with each other or with the United States or with any person, which may be required in connection with a grant or loan of federal moneys for airport or air navigation facility purposes. All federal moneys accepted under this section shall be accepted and transferred or expended by the department upon such terms and conditions as are prescribed by the United States. All moneys received by the department pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available: PROVIDED, That any landing fee or charge imposed by any Indian tribe or tribes for the privilege of use of an airport facility planned, acquired, constructed, improved, maintained, or operated with financial assistance from the department pursuant to this section must apply equally to tribal and nontribal members: PROVIDED FURTHER, That in the event any municipality or municipalities, Indian tribe or tribes, or person or persons, or any distributor of aircraft fuel as defined by RCW 82.42.020 which operates in any airport facility which has received financial assistance pursuant to this section, fails to collect the aircraft fuel excise tax as specified in chapter 82.42 RCW, all funds or value of technical assistance given or paid to such municipality or municipalities, Indian tribe or tribes, or person or persons under the provisions of this section shall revert to the department, and shall be due and payable to the department immediately. [2011 c 51 § 1; 2009 c 470 § 718; 1980 c 67 § 1; 1975 1st ex.s. c 161 § 1; 1947 c 165 § 9; Rem. Supp. 1947 § 10964-89. Formerly RCW 14.04.090.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Distributor of aircraft fuel defined: RCW 82.42.010(7).

Chapter 47.76 RCW RAIL FREIGHT SERVICE

Sections

- 47.76.255 Essential rail assistance account—Deposit of revenue from lease or operations on Palouse River and Coulee City rail lines.
47.76.280 Sale or lease for use as rail service—Time limit.
47.76.290 Sale or lease for other use—Authorized buyers, notice, terms, deed, deposit of moneys.

47.76.255 Essential rail assistance account—Deposit of revenue from lease or operations on Palouse River and Coulee City rail lines. All revenue received by the department of transportation from operating leases or other business operations on the Palouse River and Coulee City rail lines must be deposited in the essential rail assistance account

created in RCW 47.76.250 and used only for the refurbishment or improvement of the Palouse River and Coulee City rail lines. [2011 c 161 § 3.]

Reviser's note: This section was directed to be codified in chapter 46.68 RCW, but placement in chapter 47.76 RCW appears to be more appropriate.

47.76.280 Sale or lease for use as rail service—Time limit. (1) The department may sell or lease property acquired under this chapter to a county rail district established under chapter 36.60 RCW, a county, a port district, or any other public or private entity authorized to operate rail service. Any public or private entity that originally donated funds to the department under this chapter shall receive credit against the purchase price for the amount donated to the department, less management costs, in the event such public or private entity purchases the property from the department.

(2) If no county rail district, county, port district, or other public or private entity authorized to operate rail service purchases or leases the property within six years after its acquisition by the department, the department may sell or lease such property in the manner provided in RCW 47.76.290. Failing this, the department may sell or convey all such property in the manner provided in RCW 47.76.300 or 47.76.320.

(3) Property acquired by the department under this chapter that is not essential for the operation of the rail service contemplated in subsections (1) and (2) of this section may be sold or leased at any time following acquisition in the manner provided in RCW 47.76.290. [2011 c 161 § 1; 1995 c 380 § 8; 1993 c 224 § 7; 1991 sp.s. c 15 § 61; 1991 c 363 § 126; 1985 c 432 § 3. Formerly RCW 47.76.040.]

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

Additional notes found at www.leg.wa.gov

47.76.290 Sale or lease for other use—Authorized buyers, notice, terms, deed, deposit of moneys. (1) If real property acquired by the department under this chapter that is essential for the operation of the rail service contemplated in RCW 47.76.280 is not sold or leased to a public or private entity authorized to operate rail service within six years of its acquisition by the department, the department may sell or lease the property at fair market value to any of the following governmental entities or persons:

- (a) Any other state agency;
- (b) The city or county in which the property is situated;
- (c) Any other municipal corporation;
- (d) The former owner, heir, or successor of the property from whom the property was acquired; or
- (e) Any abutting private owner or owners.

(2)(a) Real property acquired by the department under this chapter that is not essential for the operation of the rail service contemplated in RCW 47.76.280 may be leased or sold at fair market value, at any time following acquisition, to any entity or person in the following priority order:

- (i) The current tenant or lessee of the real property or real property abutting the property being sold;
- (ii) An abutting private owner, but only after each other abutting private owner, if any, as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting private owner requests in writing the

right to purchase the real property within fifteen days after receiving notice of the proposed sale, the real property must be sold at public auction in the manner provided in RCW 47.76.320 (2) through (4);

- (iii) Any other state agency;
- (iv) The city or county in which the real property is situated;
- (v) Any other municipal corporation; or
- (vi) The former owner, heir, or successor of the real property from whom the real property was acquired.

(b) If the department intends to sell or lease property under this subsection to an entity or person that is not the entity or person with the highest priority status under this subsection, the department must give written notice to each entity or person with higher priority status under this subsection that is reasonably considered to have an interest in the property. The entity with the highest priority status, willing to enter into a sale or lease at fair market value, must be given right of first refusal to buy or lease the property.

(3) Notice of intention to sell under this section shall be given by publication in one or more newspapers of general circulation in the area in which the property is situated not less than thirty days prior to the intended date of sale.

(4) Sales to purchasers under this section may, at the department's option, be for cash or by real estate contract, except that any such property of the Palouse River and Coulee City rail lines that was purchased with bond proceeds in November 2004 may be sold only for cash at fair market value.

(5) Conveyances made under this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(6) All moneys received under this section shall be deposited in the essential rail assistance account created in RCW 47.76.250. Any moneys deposited under this subsection from sales or leases of property that are related, in any way, to the Palouse River and Coulee City rail lines must be used and, in the case of moneys received from sales, expended within two years of receipt, only for the refurbishment or improvement of the Palouse River and Coulee City rail lines. [2011 c 161 § 2; 1993 c 224 § 8; 1991 sp.s. c 15 § 62; 1985 c 432 § 4. Formerly RCW 47.76.050.]

Additional notes found at www.leg.wa.gov

Title 48

INSURANCE

Chapters

- 48.01 Initial provisions.
- 48.02 Insurance commissioner.
- 48.03 Examinations.
- 48.05 Insurers—General requirements.
- 48.10 Reciprocal insurers.
- 48.13 Investments.
- 48.14 Fees and taxes.
- 48.15 Unauthorized insurers.
- 48.17 Insurance producers, title insurance agents, and adjusters.
- 48.18 The insurance contract.
- 48.20 Disability insurance.
- 48.21 Group and blanket disability insurance.

- 48.31 Mergers, rehabilitation, liquidation, supervision.
- 48.36A Fraternal benefit societies.
- 48.37 Market conduct oversight.
- 48.41 Health insurance coverage access act.
- 48.43 Insurance reform.
- 48.44 Health care services.
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- 48.64 Affordable housing entities—Joint self-insurance programs.
- 48.85 Washington long-term care partnership.
- 48.94 Reinsurance intermediary act.
- 48.102 Life settlements act.
- 48.110 Service contracts and protection product guarantees.
- 48.155 Health care discount plan organization act.

Chapter 48.01 RCW INITIAL PROVISIONS

Sections

- 48.01.080 Penalties.
- 48.01.235 Enrollment of a child under the health plan of the child's parent—Requirements—Restrictions.

48.01.080 Penalties. Except as otherwise provided in this code, any person violating any provision of this code is guilty of a gross misdemeanor and will, upon conviction, be fined not less than ten dollars nor more than one thousand dollars, or imprisoned for not more than three hundred sixty-four days, or both, in addition to any other penalty or forfeiture provided herein or otherwise by law. [2011 c 96 § 37; 2003 c 250 § 1; 1947 c 79 § .01.08; Rem. Supp. 1947 § 45.01.08.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Severability—2003 c 250: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 250 § 15.]

48.01.235 Enrollment of a child under the health plan of the child's parent—Requirements—Restrictions.

(1) An issuer and an employee welfare benefit plan, whether insured or self funded, as defined in the employee retirement income security act of 1974, 29 U.S.C. Sec. 1101 et seq. may not deny enrollment of a child under the health plan of the child's parent on the grounds that:

- (a) The child was born out of wedlock;
- (b) The child is not claimed as a dependent on the parent's federal tax return; or
- (c) The child does not reside with the parent or in the issuer's, or insured or self funded employee welfare benefit plan's service area.

(2) Where a child has health coverage through an issuer, or an insured or self funded employee welfare benefit plan of a noncustodial parent, the issuer, or insured or self funded employee welfare benefit plan, shall:

- (a) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;
- (b) Permit the provider or the custodial parent to submit claims for covered services without the approval of the non-

custodial parent. If the provider submits the claim, the provider will obtain the custodial parent's assignment of insurance benefits or otherwise secure the custodial parent's approval.

For purposes of this subsection the health care authority as the state medicaid agency under RCW 74.09.500 may reassign medical insurance rights to the provider for custodial parents whose children are eligible for services under RCW 74.09.500; and

(c) Make payments on claims submitted in accordance with (b) of this subsection directly to the custodial parent, to the provider, or to the health care authority as the state medicaid agency under RCW 74.09.500.

(3) Where a child does not reside in the issuer's service area, an issuer shall cover no less than urgent and emergent care. Where the issuer offers broader coverage, whether by policy or reciprocal agreement, the issuer shall provide such coverage to any child otherwise covered that does not reside in the issuer's service area.

(4) Where a parent is required by a court order to provide health coverage for a child, and the parent is eligible for family health coverage, the issuer, or insured or self funded employee welfare benefit plan, shall:

(a) Permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(b) Enroll the child under family coverage upon application of the child's other parent, health care authority as the state medicaid agency under RCW 74.09.500, or child support enforcement program, if the parent is enrolled but fails to make application to obtain coverage for such child; and

(c) Not disenroll, or eliminate coverage of, such child who is otherwise eligible for the coverage unless the issuer or insured or self funded employee welfare benefit plan is provided satisfactory written evidence that:

- (i) The court order is no longer in effect; or
- (ii) The child is or will be enrolled in comparable health coverage through another issuer, or insured or self funded employee welfare benefit plan, which will take effect not later than the effective date of disenrollment.

(5) An issuer, or insured or self funded employee welfare benefit plan, that has been assigned the rights of an individual eligible for medical assistance under medicaid and coverage for health benefits from the issuer, or insured or self funded employee welfare benefit plan, may not impose requirements on the health care authority that are different from requirements applicable to an agent or assignee of any other individual so covered. [2011 1st sp.s. c 15 § 76; 2003 c 248 § 2; 1995 c 34 § 3.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Chapter 48.02 RCW INSURANCE COMMISSIONER

Sections

- 48.02.120 Records—Public inspection.
- 48.02.150 Supplies.
- 48.02.190 Operating costs of office—Insurance commissioner's regulatory account—Regulatory surcharge.

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

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

(3) Except as provided in subsection (4) of this section, actuarial formulas, statistics, and assumptions submitted in support of a rate or form filing by an insurer, health care service contractor, or health maintenance organization or submitted to the commissioner upon his or her request shall be withheld from public inspection in order to preserve trade secrets or prevent unfair competition.

(4) For individual and small group health benefit plan rate filings submitted on or after July 1, 2011, subsection (3) of this section applies only to the numeric values of each small group rating factor used by a health carrier as authorized by RCW 48.21.045(3)(a), 48.44.023(3)(a), and 48.46.066(3)(a). Subsection (3) of this section may continue to apply for a period of one year from the date a new individual or small group product filing is submitted or until the next rate filing for the product, whichever occurs earlier, if the commissioner determines that the proposed rate filing is for a new product that is distinct and unique from any of the carrier's currently or previously offered health benefit plans. Carriers must make a written request for a product classification as a new product under this subsection and must receive subsequent written approval by the commissioner for this subsection to apply.

(5) Unless the commissioner has determined that a filing is for a new product pursuant to subsection (4) of this section, for all individual or small group health benefit rate filings submitted on or after July 1, 2011, the health carrier must submit part I rate increase summary and part II written explanation of the rate increase as set forth by the department of health and human services at the time of filing, and the commissioner must:

(a) Make each filing and the part I rate increase summary and part II written explanation of the rate increase available for public inspection on the tenth calendar day after the commissioner determines that the rate filing is complete and accepts the filing for review through the electronic rate and form filing system; and

(b) Prepare a standardized rate summary form, to explain his or her findings after the rate review process is completed. The commissioner's summary form must be included as part of the rate filing documentation and available to the public electronically. [2011 c 312 § 1; 1985 c 264 § 2; 1979 ex.s. c 130 § 1; 1947 c 79 § .02.12; Rem. Supp. 1947 § 45.02.12.]

48.02.150 Supplies. The commissioner must purchase at the expense of the state, and in the manner provided by law, printing, books, reports, furniture, equipment, and supplies as he or she deems necessary to the proper discharge of his or her duties under this code. [2011 c 47 § 2; 2009 c 549 § 7011; 1947 c 79 § .02.15; Rem. Supp. 1947 § 45.02.15.]

48.02.190 Operating costs of office—Insurance commissioner's regulatory account—Regulatory surcharge. (1) As used in this section:

(a) "Organization" means every insurer, as defined in RCW 48.01.050, having a certificate of authority to do business in this state, every health care service contractor, as defined in RCW 48.44.010, every health maintenance organization, as defined in RCW 48.46.020, or self-funded multiple employer welfare arrangement, as defined in RCW 48.125.010, registered to do business in this state. "Class one" organizations consist of all insurers as defined in RCW 48.01.050. "Class two" organizations consist of all organizations registered under provisions of chapters 48.44 and 48.46 RCW. "Class three" organizations consist of self-funded multiple employer welfare arrangements as defined in RCW 48.125.010.

(b)(i) "Receipts" means (A) net direct premiums consisting of direct gross premiums, as defined in RCW 48.18.170, paid for insurance written or renewed upon risks or property resident, situated, or to be performed in this state, less return premiums and premiums on policies not taken, dividends paid or credited to policyholders on direct business, and premiums received from policies or contracts issued in connection with qualified plans as defined in RCW 48.14.021, and (B) prepayments to health care service contractors, as defined in RCW 48.44.010, health maintenance organizations, as defined in RCW 48.46.020, or participant contributions to self-funded multiple employer welfare arrangements, as defined in RCW 48.125.010, less experience rating credits, dividends, prepayments returned to subscribers, and payments for contracts not taken.

(ii) Participant contributions, under chapter 48.125 RCW, used to determine the receipts in this state under this section are determined in the same manner as premiums taxable in this state are determined under RCW 48.14.090.

(c) "Regulatory surcharge" means the fees imposed by this section.

(2) The annual cost of operating the office of insurance commissioner is determined by legislative appropriation. A pro rata share of the cost is charged to all organizations as a regulatory surcharge. Each class of organization must contribute a sufficient amount to the insurance commissioner's regulatory account to pay the reasonable costs, including overhead, of regulating that class of organization.

(3) The regulatory surcharge is calculated separately for each class of organization. The regulatory surcharge collected from each organization is that portion of the cost of operating the insurance commissioner's office, for that class of organization, for the ensuing fiscal year that is represented by the organization's portion of the receipts collected or received by all organizations within that class on business in this state during the previous calendar year. However, the regulatory surcharge must not exceed one-eighth of one percent of receipts and the minimum regulatory surcharge is one thousand dollars.

(4) The commissioner must annually, on or before July 1st, calculate and bill each organization for the amount of the regulatory surcharge. The regulatory surcharge is due and payable no later than July 15th of each year. However, if the necessary financial records are not available or if the amount of the legislative appropriation is not determined in time to carry out such calculations and bill such regulatory surcharge within the time specified, the commissioner may use the regulatory surcharge factors for the prior year as the basis for the

regulatory surcharge and, if necessary, the commissioner may impose supplemental fees to fully and properly charge the organizations. Any organization failing to pay the regulatory surcharges by July 31st must pay the same penalties as the penalties for failure to pay taxes when due under RCW 48.14.060. The regulatory surcharge required by this section is in addition to all other taxes and fees now imposed or that may be subsequently imposed.

(5) All moneys collected must be deposited in the insurance commissioner's regulatory account in the state treasury which is hereby created.

(6) Unexpended funds in the insurance commissioner's regulatory account at the close of a fiscal year are carried forward in the insurance commissioner's regulatory account to the succeeding fiscal year and are used to reduce future regulatory surcharges.

(7)(a) Each insurer may annually collect regulatory surcharges remitted in preceding years by means of a policyholder surcharge on premiums charged for all kinds of insurance. The recoupment is at a uniform rate reasonably calculated to collect the regulatory surcharge remitted by the insurer.

(b) If an insurer fails to collect the entire amount of the recoupment in the first year under this section, it may repeat the recoupment procedure provided for in this subsection (7) in succeeding years until the regulatory surcharge is fully collected or a de minimis amount remains uncollected. Any such de minimis amount may be collected as provided in (d) of this subsection.

(c) The amount and nature of any recoupment must be separately stated on either a billing or policy declaration sent to an insured. The amount of the recoupment must not be considered a premium for any purpose, including the premium tax or agents' commissions.

(d) An insurer may elect not to collect the regulatory surcharge from its insured. In such a case, the insurer may recoup the regulatory surcharge through its rates, if the following requirements are met:

(i) The insurer remits the amount of surcharge not collected by election under this subsection; and

(ii) The surcharge is not considered a premium for any purpose, including the premium tax or agents' commission. [2011 c 47 § 3; 2009 c 161 § 1; 2008 c 328 § 6003. Prior: 2007 c 468 § 1; 2007 c 153 § 3; 2004 c 260 § 22; 2003 1st sp.s. c 25 § 923; 2002 c 371 § 913; 1987 c 505 § 54; 1986 c 296 § 7.]

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Additional notes found at www.leg.wa.gov

Chapter 48.03 RCW EXAMINATIONS

Sections

48.03.060 Examination expense.

[2011 RCW Supp—page 1104]

48.03.060 Examination expense. (1) Examinations within this state of any insurer or self-funded multiple employer welfare arrangement as defined in RCW 48.125.010 domiciled or having its home offices in this state, other than a title insurer, made by the commissioner or the commissioner's examiners and employees must, except as to fees, mileage, and expense incurred as to witnesses, be at the expense of the state.

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

(3) When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which must be borne by the person who is the subject of the examination, except as provided in subsection (1) of this section.

(4) The person examined and liable must reimburse the state upon presentation of an itemized statement for the actual travel expenses of the commissioner's examiners, their reasonable living expense allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem salary and expenses for employees examining insurers domiciled outside the state of Washington must be established by the commissioner on the basis of the national association of insurance commissioner's recommended salary and expense schedule for zone examiners, or the salary schedule established by the state director of personnel, and the expense schedule established by the office of financial management, whichever is higher. A domestic title insurer must pay the examination expense and costs to the commissioner as itemized and billed by the commissioner.

The commissioner or the commissioner's examiners must not receive or accept any additional emolument on account of any examination.

(5) Nothing contained in this chapter limits the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action under the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination are prima facie evidence in any legal or regulatory action. [2011 c 47 § 4; 2004 c 260 § 23; 1995 c 152 § 2. Prior: 1993 c 462 § 47; 1993 c 281 § 55; 1981 c 339 § 2; 1979 ex.s. c 35 § 1; 1947 c 79 § .03.06; Rem. Supp. 1947 § 45.03.06.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Intent—1995 c 152: "The only intent of the legislature in chapter 152, Laws of 1995 is to correct double amendments. It is not the intent of the legislature to change the substance or effect of any statute previously enacted." [1995 c 152 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 48.05 RCW

INSURERS—GENERAL REQUIREMENTS

Sections

- 48.05.200 Commissioner as attorney for service of process—Exception.
- 48.05.210 Repealed.
- 48.05.215 Unauthorized foreign or alien insurers—Jurisdiction of state courts—Service of process—Procedure.

48.05.200 Commissioner as attorney for service of process—Exception. (1) Each authorized foreign or alien insurer must appoint the commissioner as its attorney to receive service of, and upon whom must be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes service upon the insurer. Service of legal process against the insurer can be had only by service upon the commissioner, except actions upon contractor bonds pursuant to RCW 18.27.040, where service may be upon the department of labor and industries.

(2) With the appointment the insurer must designate by name, e-mail address, and address the person to whom the commissioner must forward legal process so served upon him or her. The insurer may change the person by filing a new designation.

(3) The insurer must keep the designation, address, and e-mail address filed with the commissioner current.

(4) The appointment of the commissioner as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the insurer, and remains in effect as long as there is in force in this state any contract made by the insurer or liabilities or duties arising therefrom.

(5) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200. [2011 c 47 § 5; 1985 c 264 § 3; 1947 c 79 § .05.20; Rem. Supp. 1947 § 45.05.20.]

48.05.210 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

(2) In any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary, service of legal process against an unauthorized foreign or alien insurer must be accomplished and processed in the manner prescribed under RCW 48.02.200. The defendant insurer has forty days from the date of the service on the commissioner within which to plead, answer, or otherwise defend the action.

(3) In any such action, suit, or proceeding by the commissioner, service of legal process against an unauthorized

foreign or alien insurer may be made by personal service of legal process upon any officer of such insurer at its last known principal place of business outside the state of Washington. The summons upon an unauthorized foreign or alien insurer must contain the same requisites and be served in like manner as personal summons within the state of Washington; except, the insurer has forty days from the date of personal service within which to plead, answer, or otherwise defend the action. [2011 c 47 § 6; 1981 c 339 § 4; 1967 c 150 § 3.]

Chapter 48.10 RCW

RECIPROCAL INSURERS

Sections

- 48.10.170 Service of legal process.

48.10.170 Service of legal process. (1) Each authorized reciprocal insurer must appoint the commissioner as its attorney to receive service of, and upon whom service must be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes service upon the insurer.

(2) With the appointment the insurer must designate the person to whom the commissioner must forward legal process so served upon him or her.

(3) The appointment of the commissioner as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the insurer, and remains in effect as long as there is in force in this state any contract made by the insurer or liabilities or duties arising under that contract.

(4) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

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

(6) Any judgment against the insurer based upon legal process so served is binding upon each of the insurer’s subscribers as their respective interests may appear and in an amount not exceeding their respective contingent liabilities. [2011 c 47 § 7; 2009 c 549 § 7042; 1947 c 79 § .10.17; Rem. Supp. 1947 § 45.10.17.]

Chapter 48.13 RCW

INVESTMENTS

Sections

- 48.13.005 Purpose—Application. *(Effective July 1, 2012.)*
- 48.13.009 Definitions. *(Effective July 1, 2012.)*
- 48.13.010 Repealed. *(Effective July 1, 2012.)*
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- 48.13.031 Investment of funds—Board of directors—Judgment and care—Internal controls and procedures. *(Effective July 1, 2012.)*
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- 48.13.050 Repealed. *(Effective July 1, 2012.)*
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- 48.13.060 Repealed. *(Effective July 1, 2012.)*

- 48.13.061 Classes of investments—Description—Rules. *(Effective July 1, 2012.)*
- 48.13.070 Repealed. *(Effective July 1, 2012.)*
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- 48.13.080 Repealed. *(Effective July 1, 2012.)*
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- 48.13.101 Satisfaction of the minimum asset requirement—When assets may be counted. *(Effective July 1, 2012.)*
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- 48.13.111 Commissioner's powers—Requirements of persons subject to regulation. *(Effective July 1, 2012.)*
- 48.13.120 Repealed. *(Effective July 1, 2012.)*
- 48.13.121 Commissioner may retain experts—Insurer's expense. *(Effective July 1, 2012.)*
- 48.13.125 Repealed. *(Effective July 1, 2012.)*
- 48.13.130 Repealed. *(Effective July 1, 2012.)*
- 48.13.131 When investment practices are not in compliance—Commissioner's authority. *(Effective July 1, 2012.)*
- 48.13.140 Repealed. *(Effective July 1, 2012.)*
- 48.13.141 Aggrieved insurer—Request for hearing. *(Effective July 1, 2012.)*
- 48.13.150 Repealed. *(Effective July 1, 2012.)*
- 48.13.151 Confidentiality of investment policy information. *(Effective July 1, 2012.)*
- 48.13.160 Repealed. *(Effective July 1, 2012.)*
- 48.13.161 Chapter prevails over other statutes—Valuation of assets. *(Effective July 1, 2012.)*
- 48.13.170 Repealed. *(Effective July 1, 2012.)*
- 48.13.171 Rule making—Special investment restrictions. *(Effective July 1, 2012.)*
- 48.13.180 Repealed. *(Effective July 1, 2012.)*
- 48.13.190 Repealed. *(Effective July 1, 2012.)*
- 48.13.200 Repealed. *(Effective July 1, 2012.)*
- 48.13.210 Repealed. *(Effective July 1, 2012.)*
- 48.13.218 Repealed. *(Effective July 1, 2012.)*
- 48.13.220 Repealed. *(Effective July 1, 2012.)*
- 48.13.230 Repealed. *(Effective July 1, 2012.)*
- 48.13.240 Repealed. *(Effective July 1, 2012.)*
- 48.13.250 Repealed. *(Effective July 1, 2012.)*
- 48.13.260 Repealed. *(Effective July 1, 2012.)*
- 48.13.265 Repealed. *(Effective July 1, 2012.)*
- 48.13.270 Repealed. *(Effective July 1, 2012.)*
- 48.13.273 Repealed. *(Effective July 1, 2012.)*
- 48.13.275 Repealed. *(Effective July 1, 2012.)*
- 48.13.280 Repealed. *(Effective July 1, 2012.)*
- 48.13.285 Repealed. *(Effective July 1, 2012.)*
- 48.13.290 Repealed. *(Effective July 1, 2012.)*
- 48.13.340 Repealed. *(Effective July 1, 2012.)*
- 48.13.350 Written record of investments—Contents. *(Effective July 1, 2012.)*
- 48.13.900 Effective date—2011 c 188.

48.13.005 Purpose—Application. *(Effective July 1, 2012.)* (1) The purpose of chapter 188, Laws of 2011 is to protect and to further the interests of insureds, creditors, and the general public by providing, with minimum interference with management initiative and judgment, prudent standards for the development and administration of insurer investment programs.

(2) Chapter 188, Laws of 2011 and the rules adopted to interpret and implement it apply to domestic insurers, United States branches of alien insurers entered through this state, alien insurers admitted and using this state as their port of entry, domestic fraternal benefit societies formed pursuant to chapter 48.36A RCW, domestic health care service contractors formed pursuant to chapter 48.44 RCW, domestic health maintenance organizations formed pursuant to chapter 48.46 RCW, and domestic self-funded multiple employer welfare arrangements formed pursuant to chapter 48.125 RCW.

(3) Separate accounts established in accordance with RCW 48.18A.020 shall be evaluated separately pursuant to that section. [2011 c 188 § 1.]

48.13.009 Definitions. *(Effective July 1, 2012.)* The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Derivative instrument" means an item appropriately reported in schedule DB (derivative instruments) or schedule DC (insurance futures and insurance futures options) of an insurer's statutory financial statement or successor schedules, pursuant to applicable annual statement instructions or statutory accounting guidelines.

(2) "Derivative transaction" means a transaction involving the use of one or more derivative instruments.

(3) "Income generation" means a derivative transaction involving the writing of covered options, caps, or floors that is intended to generate income or enhance return.

(4) "Leverage" means the relationship of insurance and investment risks to capital and surplus as defined by the national association of insurance commissioners insurance regulatory information system and its other financial analysis solvency tools and reports.

(5) "Lower grade investment" means a rated credit instrument or debt-like preferred stock rated 4, 5, or 6 by the securities valuation office of the national association of insurance commissioners or any successor office.

(6) "Medium grade investment" means a rated credit instrument or debt-like preferred stock rated 3 by the securities valuation office of the national association of insurance commissioners or any successor office.

(7) "Minimum asset requirement" is the sum of an insurer's liabilities and its minimum financial security benchmark.

(8) "Minimum financial security benchmark" is the amount an insurer is required to have under RCW 48.13.021.

(9) "Mutual fund" means a mutual fund or exchange traded fund registered with the securities and exchange commission of the United States under the investment company act of 1940.

(10) "Rated by the securities valuation office" means any security that is directly rated by the securities valuation office or that is given an equivalent filing exempt rating as prescribed in the purposes and procedures manual of the national association of insurance commissioners securities valuation office.

(11) "Replication" means a derivative transaction involving one or more derivative instruments being used to modify the cash flow characteristics of one or more investments held by an insurer in a manner so that the aggregate cash flows of the derivative instruments and investments reproduce the cash flows of another investment having a higher risk-based capital charge than the risk-based capital charge of the original instruments or investments.

(12) "Securities valuation office listed mutual fund" means a money market mutual fund or short-term bond fund that is registered with the United States securities and exchange commission under the investment company act of 1940, and that has been determined by the national association of insurance commissioners securities valuation office to

be eligible for special reserve and reporting treatment, other than as common stock.

(13) "Surplus" means the excess of admitted assets over all liabilities.

(14) "United States government securities" means any security defined in the purposes and procedures manual of the national association of insurance commissioners securities valuation office as a United States government security. [2011 c 188 § 2.]

48.13.010 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.020 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.021 Minimum financial security benchmark—Determination of amount. (Effective July 1, 2012.) (1) Minimum financial security benchmark.

(a) Unless otherwise established in accordance with (b) and (c) of this subsection, the amount of the minimum financial security benchmark for an insurer shall be the greater of:

(i) The authorized control level risk-based capital applicable to the insurer as set forth by RCW 48.05.450 or 48.43.320; or

(ii) The minimum capital or minimum surplus required by statute or rule for maintenance of an insurer's certificate of authority, certificate of registration, or other form of authorization to transact business pursuant to Title 48 RCW.

(b) The commissioner may, in accordance with the factors in subsection (2)(b) of this section, establish by order a minimum financial security benchmark to apply to a specific insurer provided it is not less than the amount determined by (a) of this subsection, in the event the insurer falls below three and one-half times the authorized control level risk-based capital applicable to the insurer as set forth by RCW 48.05.450 or 48.43.320.

(c) The commissioner may establish by rule a minimum financial security benchmark that is a multiple of authorized control level risk-based capital to apply to any class of insurers provided the amount established by the rule is not less than the amount determined in (a) of this subsection.

(2) The commissioner shall determine the amount of surplus that shall constitute an insurer's minimum financial security benchmark, as an amount that will provide reasonable security against contingencies affecting the insurer's financial position that are not fully covered by reserves or by reinsurance.

(a) Types of contingencies. The commissioner shall consider the risks of:

(i) Increases in the frequency or severity of losses beyond the levels contemplated by the rates charged;

(ii) Increases in expenses beyond those contemplated by the rates charged;

(iii) Decreases in the value of or the return on invested assets below those planned on;

(iv) Changes in economic conditions that would make liquidity more important than contemplated and would force untimely sale of assets or prevent timely investments;

(v) Currency devaluation to which the insurer may be subject;

(vi) Diminished prospects for performance of reinsurers' or other counter parties' obligations; and

(vii) Any other contingencies the commissioner can identify that may affect the insurer's operations.

(b) Controlling factors. In making the determination under this subsection, the commissioner shall take into account the following factors:

(i) The most reliable information available as to the magnitude of the various risks under (a) of this subsection;

(ii) The extent to which the risks in (a) of this subsection are independent of each other or are related, and whether any dependency is direct or inverse;

(iii) The insurer's recent history of profits or losses;

(iv) The extent to which the insurer has provided protection against the contingencies in other ways than the establishment of surplus; including redundancy of premiums, adjustability of contracts under their terms, investment valuation reserves whether voluntary or mandatory, appropriate reinsurance, the use of conservative actuarial assumptions to provide a margin of security, reserve adjustments in recognition of previous rate inadequacies, contingency or catastrophe reserves, diversification of assets, and underwriting risks;

(v) Independent judgments of the soundness of the insurer's operations, as evidenced by the ratings of reliable professional financial reporting services; and

(vi) Any other relevant factors. [2011 c 188 § 3.]

48.13.030 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.031 Investment of funds—Board of directors—Judgment and care—Internal controls and procedures. (Effective July 1, 2012.) (1) Subject to the provisions of this chapter, an insurer may loan or invest its funds, and may buy, sell, hold title to, possess, occupy, pledge, convey, manage, protect, insure, and deal with its investments, property, and other assets to the same extent as any other person or corporation under the laws of this state and of the United States.

(2) With respect to all of the insurer's investments, the board of directors of an insurer shall exercise the judgment and care, under the circumstances then prevailing, that persons of reasonable prudence, discretion, and intelligence exercise in the management of a like enterprise, not in regard to speculating but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Investments shall be of sufficient value, liquidity, and diversity to assure the insurer's ability to meet its outstanding obligations based on reasonable assumptions as to new business production for current lines of business. As part of its exercise of judgment and care, the board of directors shall take into account the prudence evaluation criteria of RCW 48.13.041.

(3) The insurer shall establish and implement internal controls and procedures to assure compliance with investment policies and procedures to assure that:

(a) The insurer's investment staff and any consultants used are reputable and capable;

(b) A periodic evaluation and monitoring process occurs for assessing the effectiveness of investment policy and strategies;

(c) Management's performance is assessed in meeting the stated objectives within the investment policy; and

(d) Appropriate analyses are undertaken of the degree to which asset cash flows are adequate to meet liability cash flows under different economic environments. These analyses shall be conducted at least annually and make specific reference to economic conditions. [2011 c 188 § 4.]

48.13.040 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.041 Determining whether an investment portfolio or investment policy is prudent. (Effective July 1, 2012.) The following factors shall be evaluated by the insurer and considered along with its business in determining whether an investment portfolio or investment policy is prudent; the commissioner shall consider the following factors prior to making a determination that an insurer's investment portfolio or investment policy is not prudent:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The fairness and reasonableness of the terms of an investment considering its probable risk and reward characteristics and relationship to the investment portfolio as a whole;

(5) The extent of the diversification of the insurer's investments among:

(a) Individual investments;

(b) Classes of investments;

(c) Industry concentrations;

(d) Dates of maturity; and

(e) Geographic areas;

(6) The quality and liquidity of investments in affiliates;

(7) The investment exposure to the following risks, quantified in a manner consistent with the insurer's acceptable risk level identified in RCW 48.13.051(8):

(a) Liquidity;

(b) Credit and default;

(c) Systemic (market);

(d) Interest rate;

(e) Call, prepayment, and extension;

(f) Currency;

(g) Foreign sovereign; and

(h) Leverage;

(8) The amount of the insurer's assets, capital, and surplus, premium writings, insurance in force, and other appropriate characteristics;

(9) The amount and adequacy of the insurer's reported liabilities;

(10) The relationship of the expected cash flows of the insurer's assets and liabilities, and the risk of adverse changes in the insurer's assets and liabilities;

(11) The adequacy of the insurer's capital and surplus to secure the risks and liabilities of the insurer; and

(12) Any other factors relevant to whether an investment is prudent. [2011 c 188 § 5.]

48.13.050 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.051 Written investment policy required—Annual review—Contents. (Effective July 1, 2012.) In acquiring, investing, exchanging, holding, selling, and managing investments, an insurer shall establish and follow a written investment policy that shall be reviewed and approved by the insurer's board of directors at least annually. The content and format of an insurer's investment policy are at the insurer's discretion, but shall include written guidelines appropriate to the insurer's business as to the following:

(1) The delegation and monitoring of policies, procedures, and controls covering all aspects of the investing function;

(2) Quantified goals and objectives regarding the composition of classes of investments, including maximum internal limits;

(3) Periodic evaluation of the investment portfolio as to its risk and reward characteristics. This subsection shall not preclude an insurer from the use of modern portfolio theory to manage its investments;

(4) Professional standards for the individuals making day-to-day investment decisions to assure that investments are managed in an ethical and capable manner;

(5) The types of investments to be made and those to be avoided, based on their risk and reward characteristics and the insurer's level of experience with the investments;

(6) The relationship of classes of investments to the insurer's insurance products and liabilities;

(7) The manner in which the insurer intends to implement RCW 48.13.041; and

(8) The level of risk, based on quantitative measures, appropriate for the insurer given the level of capitalization and expertise available to the insurer. [2011 c 188 § 6.]

48.13.060 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.061 Classes of investments—Description—Rules. (Effective July 1, 2012.) The following classes of investments may be counted for the purposes specified in RCW 48.13.101, whether they are made directly or as a participant in a partnership, joint venture, or limited liability company. Investments in partnerships, joint ventures, and limited liability companies are authorized investments only pursuant to subsection (12) of this section:

(1) Cash in the direct possession of the insurer or on deposit with a financial institution regulated by any federal or state agency of the United States;

(2) Bonds, debt-like preferred stock, and other evidences of indebtedness of governmental units in the United States or Canada, or the instrumentalities of the governmental units, or private business entities domiciled in the United States or Canada, including asset-backed securities and securities valuation office listed mutual funds;

(3) Loans secured by first mortgages, first trust deeds, or other first security interests in real property located in the United States or Canada or secured by insurance against default issued by a government insurance corporation of the United States or Canada or by an insurer authorized to do business in this state;

(4) Common stock or equity-like preferred stock or equity interests in any United States or Canadian business entity, or shares of mutual funds registered with the securities and exchange commission of the United States under the investment company act of 1940, other than securities valuation office listed mutual funds, and, subsidiaries, as defined in RCW 48.31B.005 or 48.31C.010, engaged exclusively in the following businesses:

(a) Acting as an insurance producer, surplus line broker, or title insurance agent for its parent or for any of its parent's insurer subsidiaries or affiliates;

(b) Investing, reinvesting, or trading in securities or acting as a securities broker or dealer for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(c) Rendering management, sales, or other related services to any investment company subject to the federal investment company act of 1940, as amended;

(d) Rendering investment advice;

(e) Rendering services related to the functions involved in the operation of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims appraisal, and collection services;

(f) Acting as administrator of employee welfare benefit and pension plans for governments, government agencies, corporations, or other organizations or groups;

(g) Ownership and management of assets which the parent could itself own and manage: PROVIDED, that the aggregate investment by the insurer and its subsidiaries acquired pursuant to this subsection (4)(g) shall not exceed the limitations otherwise applicable to such investments by the parent;

(h) Acting as administrative agent for a government instrumentality which is performing an insurance function or is responsible for a health or welfare program;

(i) Financing of insurance premiums;

(j) Any other business activity reasonably ancillary to an insurance business;

(k) Owning one or more subsidiary;

(i) Insurers, health care service contractors, or health maintenance organizations to the extent permitted by this chapter;

(ii) Businesses specified in (a) through (k) of this subsection inclusive; or

(iii) Any combination of such insurers and businesses;

(5) Real property necessary for the convenient transaction of the insurer's business;

(6) Real property, together with the fixtures, furniture, furnishings, and equipment pertaining thereto in the United States or Canada, which produces or after suitable improvement can reasonably be expected to produce income;

(7) Loans, securities, or other investments of the types described in subsections (1) through (6) of this section in national association of insurance commissioners securities valuation office 1 debt rated countries other than the United States and Canada;

(8) Bonds or other evidences of indebtedness of international development organizations of which the United States is a member;

(9) Loans upon the security of the insurer's own policies in amounts that are adequately secured by the policies and that in no case exceed the surrender values of the policies;

(10) Tangible personal property under contract of sale or lease under which contractual payments may reasonably be expected to return the principal of and provide earnings on the investment within its anticipated useful life;

(11) Other investments the commissioner authorizes by rule; and

(12) Investments not otherwise permitted by this section, and not specifically prohibited by statute, to the extent of not more than five percent of the first five hundred million dollars of the insurer's admitted assets plus ten percent of the insurer's admitted assets exceeding five hundred million dollars. [2011 c 188 § 7.]

48.13.070 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.071 Limitations on investments—Special rules for certain investments. (Effective July 1, 2012.) (1) Class limitations. For the purposes of RCW 48.13.101, the following limitations on classes of investments apply:

(a) Investments authorized by RCW 48.13.061(2), and investments authorized by RCW 48.13.061(7) that are of the types described in RCW 48.13.061(2);

(i) The aggregate amount of medium and lower grade investments, twenty percent of its admitted assets;

(ii) The aggregate amount of lower grade investments, ten percent of its admitted assets;

(iii) The aggregate amount of investments rated 5 or 6 by the securities valuation office, five percent of its admitted assets;

(iv) The aggregate amount of investments rated 6 by the securities valuation office, one percent of its admitted assets;

or

(v) The aggregate amount of medium and lower grade investments that receive as cash income less than the equivalent yield for treasury issues with a comparative average life, one percent of its admitted assets;

(b) Investments authorized by RCW 48.13.061(3), forty-five percent of admitted assets in the case of life insurers and twenty-five percent of admitted assets in the case of nonlife insurers;

(c) Investments authorized by RCW 48.13.061(4), other than subsidiaries of the types authorized under RCW 48.13.061(4) (a) through (k), twenty percent of admitted

assets in the case of life insurers and twenty-five percent of admitted assets in the case of nonlife insurers;

(i) Individual investments authorized by RCW 48.13.061(4), except for subsidiaries, shall be limited to ten percent of the voting interest in any one entity;

(ii) Investments authorized in RCW 48.13.061(4) in one or more subsidiaries shall be limited to the lesser of ten percent of admitted assets or fifty percent of surplus;

(d) Investments authorized by RCW 48.13.061(5), ten percent of admitted assets;

(e) Investments authorized by RCW 48.13.061(6), twenty percent of admitted assets in the case of life insurers, and ten percent of admitted assets in the case of nonlife insurers;

(f) Investments authorized by RCW 48.13.061(7), twenty percent of admitted assets;

(g) Investments authorized by RCW 48.13.061(8), two percent of admitted assets; and

(h) Investments authorized by RCW 48.13.061(10), two percent of admitted assets.

(2) Individual limitations. For purposes of determining compliance with RCW 48.13.101, securities of a single issuer and its affiliates, other than United States government securities and subsidiaries authorized by RCW 48.13.061(4), shall not exceed three percent of admitted assets in the case of life insurers, and five percent in the case of nonlife insurers. Investments in the voting securities of a depository institution, or any company that controls a depository institution, shall not exceed five percent of the insurer's admitted assets.

(3) Investment subsidiaries. For purposes of determining compliance with the limitations of this section, the admitted portion of assets of subsidiaries authorized by RCW 48.13.061(4) shall be deemed to be owned directly by the insurer and any other investors in proportion to the market value or if there is no market, the reasonable value, of their interest in the subsidiaries.

(4) Effect of quantity limitations. To the extent that investments exceed the limitations specified in subsections (1) and (2) of this section, the excess may be assigned to the investment class authorized in RCW 48.13.061(12), until that limit is exhausted.

(5) Special rule for mutual funds, pooled investment vehicles, and other investment companies, excluding mutual funds listed on the securities valuation office's United States direct obligations/full faith and credit exempt list, class 1 list, and/or bond fund list (securities valuation office listed mutual funds). At the discretion of the commissioner, as may be deemed necessary in order to determine compliance with this chapter in relation to limitations of particular classes of investments, the commissioner may require that investments in mutual funds, pooled investment vehicles, or other investment companies be treated for purposes of this chapter as if the investor owned directly its proportional share of the assets owned by the mutual fund, pooled investment vehicle, or investment company to the extent such individual nonsecurities valuation office listed mutual funds, pooled investment vehicles, and other investment companies exceed two percent of admitted assets or, in aggregate, ten percent of admitted assets.

(6) Unless otherwise specified, an investment limitation computed on the basis of an insurer's admitted assets or cap-

ital and surplus shall relate to the amount required to be shown on the statutory balance sheet of the insurer most recently required to be filed with the commissioner.

(7) Investments authorized by RCW 48.13.061(3) shall not exceed eighty percent of the fair value of the particular property at the time of the investment, unless guaranteed or insured.

(a) The fair value shall be determined by a competent appraiser at the time of the investment.

(b) Buildings and other improvements shall be kept insured for the benefit of the mortgagee. [2011 c 188 § 8.]

48.13.080 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.081 Investments in securities of different currencies. (Effective July 1, 2012.) An insurer doing business that requires it to make payment in different currencies shall have investments in securities in each of these currencies in an amount that independently of all other investments meets the requirements of this chapter as applied separately to the insurer's obligations in each currency. The commissioner may by order exempt an insurer, or by rule a class of insurers, from this requirement if the obligations in other currencies are small enough that no significant problem for financial stability would be created by substantial fluctuations in relative currency values. [2011 c 188 § 9.]

48.13.090 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.091 Prohibited investments. (Effective July 1, 2012.) (1)(a) An insurer shall not invest in investments that are prohibited for an insurer by statutes or rules of this state.

(b) The use of a derivative instrument for replication, speculative, or for any purposes other than hedging or income generation, is prohibited.

(c) Investment in real property for speculative, ranching, farming, mining, gaming, amusement, oil, gas, or mineral exploration, or club purposes, is prohibited.

(d) Investment in issued shares of its own capital stock, held directly or indirectly, except for the purpose of mutualization in accordance with RCW 48.08.080, is prohibited.

(e) Investment in securities issued by any corporation if a majority of its stock having voting power is owned directly or indirectly by or for the benefit of any one or more of the insurer's officers and directors, is prohibited.

(f) Investment in securities issued by any insolvent corporation, is prohibited.

(g) Investment in any instrument or security which is found by the commissioner to be designed to evade any limitation or prohibition of this code, is prohibited.

(2) A reasonable time, not in excess of five years, shall be allowed for disposal of a prohibited investment in hardship cases if the investment is demonstrated by the insurer to have been legal when made, or the result of a mistake made in good faith, or if the commissioner deems that the sale of

the asset would be contrary to the interests of insureds, creditors, or the general public. [2011 c 188 § 10.]

48.13.100 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.101 Satisfaction of the minimum asset requirement—When assets may be counted. (*Effective July 1, 2012.*) (1) Invested assets may be counted toward satisfaction of the minimum asset requirement only so far as they are invested in compliance with this chapter and applicable rules adopted and orders issued by the commissioner pursuant to this chapter. Assets other than invested assets may be counted toward satisfaction of the minimum asset requirement at admitted annual statement value.

(2) An investment held as an admitted asset by an insurer on July 1, 2012, which qualified under this chapter shall remain qualified as an admitted asset under this chapter.

(3) Assets acquired in the bona fide enforcement of creditors' rights or in bona fide workouts or settlements of disputed claims may be counted for the purposes of subsection (1) of this section for five years after acquisition if real property and three years if not real property, even if they could not otherwise be counted under this chapter. The commissioner may allow reasonable extensions of these periods if replacement of the assets within the periods would not be possible without substantial loss.

(4) If an insurer does not own, or is unable to apply toward compliance with this chapter, an amount of assets equal to its minimum asset requirement, the commissioner may deem it to be financially hazardous under chapter 48.31 RCW. [2011 c 188 § 11.]

48.13.110 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.111 Commissioner's powers—Requirements of persons subject to regulation. (*Effective July 1, 2012.*)

(1) The commissioner may require any of the following from a person subject to regulation under this chapter:

(a) Statements, reports, answers to questionnaires, and other information, and evidence thereof, in whatever reasonable form the commissioner designates, and at such reasonable intervals as the commissioner chooses;

(b) Full explanation of the programming of any data storage or communication system in use;

(c) That information from any books, records, electronic data processing systems, computers, or any other information storage system be made available to the commissioner at a reasonable time and in a reasonable manner.

(2) The commissioner may prescribe forms for the reports under subsection (1) of this section and specify who shall execute or certify the reports. The forms for the reports required under subsection (1) of this section shall be consistent, so far as practicable, with those prescribed by other jurisdictions.

(3) The commissioner may prescribe reasonable minimum standards and techniques of accounting and data han-

dling to ensure that timely and reliable information will exist and will be available to the commissioner.

(4) Any officer, manager or general agent of an insurer subject to this chapter, any person controlling or having a contract under which the person has a right to control the insurer, whether exclusively or otherwise, or a person with executive authority over or in charge of any segment of the insurer's affairs, shall reply promptly in writing or in other reasonably designated form, to a written inquiry from the commissioner requesting a reply. A timely response is one that is received by the commissioner within fifteen business days from receipt of the inquiry. Failure to make a timely response constitutes a violation of this section.

(5) The commissioner may require that any communication made to the commissioner under this section be verified.

(6) A communication to the commissioner, or to an expert or consultant retained by the commissioner, required by the provisions of this chapter shall not subject the person making it to an action for damages for the communication in the absence of actual malice.

(7) Notwithstanding the provisions of subsection (6) of this section, the commissioner may bring suit against any person providing information required under this chapter that is not truthful and accurate. [2011 c 188 § 12.]

48.13.120 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.121 Commissioner may retain experts—Insurer's expense. (*Effective July 1, 2012.*)

The commissioner may retain at the insurer's expense attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist in reviewing the insurer's investments. Persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity. [2011 c 188 § 13.]

48.13.125 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.130 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.131 When investment practices are not in compliance—Commissioner's authority. (*Effective July 1, 2012.*)

(1) If the commissioner determines that an insurer's investment practices do not meet the provisions of this chapter, the commissioner may, after notification to the insurer of the commissioner's findings, order the insurer to make changes necessary to comply with the provisions of this chapter.

(2) If the commissioner determines that by reason of the financial condition, current investment practice, or current investment plan of an insurer, the interests of insureds, creditors, or the general public are or may be endangered, the commissioner may impose reasonable additional restrictions

upon the admissibility or valuation of investments or may impose restrictions on the investment practices of an insurer, including prohibition or divestment.

(3) The commissioner may count toward satisfaction of the minimum asset requirement any assets in which an insurer is required to invest under the laws of a country other than the United States as a condition for doing business in that country if the commissioner finds that counting them does not endanger the interests of insureds, creditors, or the general public.

(4) If the commissioner is satisfied by evidence of the financial stability of an insurer and the competence of management and its investment advisors, the commissioner, after a hearing, may by order adjust the class limitations in RCW 48.13.071, for that insurer, to the extent that the commissioner is satisfied that the interests of insureds, creditors, and the public of this state are sufficiently protected in other ways. Adjustments granted with respect to RCW 48.13.071, in aggregate, are limited to an amount equal to ten percent of the insurer's liabilities. [2011 c 188 § 14.]

48.13.140 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.141 Aggrieved insurer—Request for hearing. (Effective July 1, 2012.) An insurer aggrieved by an order or any other act or failure to act of the commissioner regarding compliance with this chapter or rules adopted under this chapter may request a hearing by following the procedures of chapters 48.04 and 34.05 RCW. [2011 c 188 § 15.]

48.13.150 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.151 Confidentiality of investment policy information. (Effective July 1, 2012.) The investment policy, or information related to the investment policy provided to the commissioner for review under this chapter shall be considered confidential and shall not be a public record or subject to subpoena. [2011 c 188 § 16.]

48.13.160 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.161 Chapter prevails over other statutes—Valuation of assets. (Effective July 1, 2012.) (1) This chapter prevails over any other statute purporting to authorize an insurer to make a particular investment if the other statute was enacted before July 1, 2012, and prevails over any statute enacted after July 1, 2012, unless the latter specifically includes amendments made to this chapter.

(2) An insurer shall value its assets in accordance with the valuation standards of the national association of insurance commissioners to the extent those standards are consistent with the statutes of this state or rules or orders of the commissioner. [2011 c 188 § 17.]

48.13.170 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.171 Rule making—Special investment restrictions. (Effective July 1, 2012.) (1) The commissioner may, in accordance with chapter 34.05 RCW, adopt rules interpreting and implementing the provisions of this chapter.

(2) The commissioner may, in accordance with chapter 34.05 RCW, adopt special investment restrictions as follows:

(a) The commissioner may by rule prescribe for defined classes of insurers special procedural requirements including special reports, prior approval, or subsequent disapproval of investments.

(b) The commissioner may by rule prescribe substantive restrictions on investments of defined classes of insurers, including:

(i) Specification of classes of assets that may not be counted toward satisfaction of the minimum asset requirement even though they may be counted for unrestricted insurers;

(ii) Specification of maximum amounts of assets that may be invested in a single investment, or an issue, a class or a group of classes of investments, expressed as percentages of total assets, capital, surplus, legal reserves, or other variables;

(iii) Prescription of qualitative tests for investments and conditions under which investments may be made, including requirements of specified ratings from investment advisory services, listing on specified stock exchanges, collateral, marketability, currency matching, and the financial and legal status of the issuer and its earnings capacity.

(3) If the commissioner is satisfied by evidence of the financial stability of an insurer and the competence of management and its investment advisors, the commissioner, after a hearing, may by order grant an exemption to that insurer from any restriction under subsection (2) of this section to the extent that the commissioner is satisfied that the interests of insureds, creditors, and the general public of this state are protected in other ways. [2011 c 188 § 18.]

48.13.180 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.190 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.200 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.210 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.218 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.220 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.230 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.240 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.250 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.260 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.265 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.270 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.273 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.275 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.280 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.285 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.290 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.340 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.13.350 Written record of investments—Contents. (*Effective July 1, 2012.*) A written record of each investment or loan of the funds of a domestic insurer shall contain:

(1) In the case of loans: The name of the borrower; the location and legal description of the property; a physical description, and the appraised value of the security; the amount of the loan, rate of interest and terms of repayment.

(2) In the case of securities: The name of the obligor; a description of the security and the record of earnings; the amount invested, the rate of interest or dividend, the maturity and yield based upon the purchase price.

(3) In the case of real estate: The location and legal description of the property; a physical description and the appraised value; the purchase price and terms.

(4) In the case of all investments:

(a) The amount of expenses and commissions if any incurred on account of any investment or loan and by whom and to whom payable if not covered by contracts with mortgage loan representatives or correspondents which are part of the insurer's records.

(b) The name of any officer or director of the insurer having any direct, indirect, or contingent interest in the securities or loan representing the investment, or in the assets of the person in whose behalf the investment or loan is made, and the nature of such interest. [2011 c 188 § 20; 2009 c 549 § 7055; 1949 c 190 § 20; 1947 c 79 § .13.35; Rem. Supp. 1949 § 45.13.35.]

48.13.900 Effective date—2011 c 188. This act takes effect July 1, 2012. [2011 c 188 § 24.]

Chapter 48.14 RCW FEES AND TAXES

Sections

48.14.0201 Premiums and prepayments tax—Health care services—Exemptions—State preemption.

48.14.0201 Premiums and prepayments tax—Health care services—Exemptions—State preemption. (1) As used in this section, "taxpayer" means a health maintenance organization as defined in RCW 48.46.020, a health care service contractor as defined in RCW 48.44.010, or a self-funded multiple employer welfare arrangement as defined in RCW 48.125.010.

(2) Each taxpayer must pay a tax on or before the first day of March of each year to the state treasurer through the insurance commissioner's office. The tax must be equal to the total amount of all premiums and prepayments for health care services collected or received by the taxpayer under RCW 48.14.090 during the preceding calendar year multiplied by the rate of two percent. For tax purposes, the reporting of premiums and prepayments must be on a written basis or on a paid-for basis consistent with the basis required by the annual statement.

(3) Taxpayers must prepay their tax obligations under this section. The minimum amount of the prepayments is the percentages of the taxpayer's tax obligation for the preceding calendar year recomputed using the rate in effect for the current year. For the prepayment of taxes due during the first calendar year, the minimum amount of the prepayments is the percentages of the taxpayer's tax obligation that would have been due had the tax been in effect during the previous calendar year. The tax prepayments must be paid to the state treasurer through the commissioner's office by the due dates and in the following amounts:

(a) On or before June 15, forty-five percent;

(b) On or before September 15, twenty-five percent;

(c) On or before December 15, twenty-five percent.

(4) For good cause demonstrated in writing, the commissioner may approve an amount smaller than the preceding calendar year's tax obligation as recomputed for calculating the health maintenance organization's, health care service contractor's, self-funded multiple employer welfare arrangement's, or certified health plan's prepayment obligations for the current tax year.

(5) Moneys collected under this section are deposited in the general fund.

(6) The taxes imposed in this section do not apply to:

(a) Amounts received by any taxpayer from the United States or any instrumentality thereof as prepayments for health care services provided under Title XVIII (medicare) of the federal social security act.

(b) Amounts received by any taxpayer from the state of Washington as prepayments for health care services provided under:

(i) The medical care services program as provided in RCW 74.09.035; or

(ii) The Washington basic health plan on behalf of subsidized enrollees as provided in chapter 70.47 RCW.

(c) Amounts received by any health care service contractor, as defined in RCW 48.44.010, as prepayments for health care services included within the definition of practice of dentistry under RCW 18.32.020.

(d) Participant contributions to self-funded multiple employer welfare arrangements that are not taxable in this state.

(7) Beginning January 1, 2000, the state preempts the field of imposing excise or privilege taxes upon taxpayers and no county, city, town, or other municipal subdivision has the right to impose any such taxes upon such taxpayers. This subsection is limited to premiums and payments for health benefit plans offered by health care service contractors under chapter 48.44 RCW, health maintenance organizations under chapter 48.46 RCW, and self-funded multiple employer welfare arrangements as defined in RCW 48.125.010. The preemption authorized by this subsection must not impair the ability of a county, city, town, or other municipal subdivision to impose excise or privilege taxes upon the health care services directly delivered by the employees of a health maintenance organization under chapter 48.46 RCW.

(8)(a) The taxes imposed by this section apply to a self-funded multiple employer welfare arrangement only in the event that they are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner must initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing state premium taxes on these arrangements. Once the legality of the taxes has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these taxes.

(b) If there has not been a final determination of the legality of these taxes, then beginning on the earlier of (i) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (ii) April 1, 2006, the arrangement must deposit the taxes imposed by this

section into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the taxes are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account must be transferred to the state treasurer.

(9) The effect of transferring contracts for health care services from one taxpayer to another taxpayer is to transfer the tax prepayment obligation with respect to the contracts.

(10) On or before June 1st of each year, the commissioner must notify each taxpayer required to make prepayments in that year of the amount of each prepayment and must provide remittance forms to be used by the taxpayer. However, a taxpayer's responsibility to make prepayments is not affected by failure of the commissioner to send, or the taxpayer to receive, the notice or forms. [2011 c 47 § 8; 2009 c 479 § 41. Prior: 2005 c 405 § 1; 2005 c 223 § 6; 2005 c 7 § 1; 2004 c 260 § 24; 1998 c 323 § 1; 1997 c 154 § 1; 1993 sp.s. c 25 § 601; 1993 c 492 § 301.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective date—2005 c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2005]." [2005 c 7 § 3.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

Chapter 48.15 RCW

UNAUTHORIZED INSURERS

Sections

48.15.010	Definitions.
48.15.039	National database—Surplus line brokers.
48.15.040	"Surplus line" coverage. (<i>Effective until December 31, 2016.</i>)
48.15.040	"Surplus line" coverage. (<i>Effective December 31, 2016.</i>)
48.15.043	Diligent effort requirement—Exempt commercial purchaser.
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48.15.120	Premium tax—Surplus lines.
48.15.150	Legal process against surplus line insurer.

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

(1) "Affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(2) "Affiliated group" means any group of entities that are all affiliated.

(3) With respect to an insured, an entity has "control" over another entity when:

(a) The entity directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of the other entity; or

(b) The entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(4)(a) "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(i) The person employs or retains a qualified risk manager to negotiate insurance coverage;

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months; and

(iii) The person meets at least one of the following criteria:

(A) The person possesses a net worth in excess of twenty million dollars, as the amount is adjusted under (b) of this subsection;

(B) The person generates annual revenues in excess of fifty million dollars, as the amount is adjusted under (b) of this subsection;

(C) The person employs more than five hundred full-time or full-time equivalent employees per insured or is a member of an affiliated group employing more than one thousand employees in the aggregate;

(D) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars, as the amount is adjusted under (b) of this subsection; or

(E) The person is a municipality with a population in excess of fifty thousand persons.

(b) The amounts in (a)(iii)(A), (B), and (D) of this subsection must be adjusted to reflect the percentage change for the five-year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor.

(c) For the purpose of this subsection, "commercial insurance" means property and casualty insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity.

(5)(a) Except as provided in (b) of this subsection, "insured's home state" means, with respect to an insured:

(i) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) If one hundred percent of the insured risk is located out of the state referred to in this subsection, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) If more than one insured from an affiliated group are named insureds on a single insurance contract issued by an unauthorized insurer, the term "insured's home state" means the insured's home state, as determined pursuant to (a) of this subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract.

(c) To determine the home state of the insured, the principal place of business is the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured.

(6) "Qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(a) The person is an employee of, or third-party consultant retained by, the commercial policyholder;

(b) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance; and

(c) The person:

(i)(A) Has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management; and

(B)(I) Has three years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(II) Has one of the following designations:

(AA) A designation as a chartered property and casualty underwriter (CPCU) issued by the American institute for CPCU/insurance institute of America;

(BB) A designation as an associate in risk management issued by the American institute for CPCU/insurance institute of America;

(CC) A designation as [a] certified risk manager issued by the national alliance for insurance education and research;

(DD) A designation as a RIMS fellow issued by the global risk management institute; or

(EE) Any other designation, certification, or license determined by the commissioner to demonstrate minimum competency in risk management;

(ii)(A) Has at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(B) Has any one of the designations specified in (c)(i)(B)(II)(AA) through (EE) of this subsection;

(ii) Has at least ten years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) Has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management. [2011 c 31 § 1.]

Effective date—2011 c 31: "Sections 1, 2, and 4 through 9 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing institutions, and take effect July 21, 2011." [2011 c 31 § 12.]

48.15.039 National database—Surplus line brokers.

When a national insurance producer database of the national association of insurance commissioners, or other equivalent uniform national database, for the licensure of surplus line brokers is created, the commissioner may participate in the database. [2011 c 31 § 4.]

Effective date—2011 c 31: See note following RCW 48.15.010.

48.15.040 "Surplus line" coverage. (Effective until December 31, 2016.)

If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated as "surplus lines," may be procured from unauthorized insurers subject to the following conditions:

(1) The insurance must be procured through a licensed surplus line broker under this chapter. If the insurance is

property and casualty insurance, except industrial insurance under Title 51 RCW, then the insurance must be procured under the laws and rules of the insured's home state.

(2) The insurance must not be procurable, after diligent effort has been made to do so from among a majority of the insurers authorized to transact that kind of insurance in this state.

(3) Coverage shall not be procured from an unauthorized insurer for the purpose of securing a lower premium rate than would be accepted by any authorized insurer nor to secure any other competitive advantage.

(4) The commissioner may by regulation establish the degree of effort required to comply with subsections (2) and (3) of this section.

(5) At the time of procuring the insurance the surplus line broker must certify to the accuracy of the facts supporting the surplus line broker's diligent effort required in subsections (2) and (3) of this section.

(a) The certification must set forth the facts supporting the surplus line broker's diligent effort.

(b) The certification must state that under the penalty of suspension or revocation of the surplus line broker's license the facts contained in the certification are true and correct.

(c) The certification may be in electronic, digital, or another format as designated by the commissioner.

(d) The certification must be filed with the commissioner within sixty days after the insurance is procured.

(6) For purposes of chapter 48.164 RCW, a joint underwriting association established or authorized by the legislature is not an authorized insurer. [2011 c 31 § 2; 2010 c 230 § 17; 1983 1st ex.s. c 32 § 4; 1947 c 79 § .15.04; Rem. Supp. 1947 § 45.15.04.]

Expiration date—2011 c 31 § 2: "Section 2 of this act expires December 31, 2016." [2011 c 31 § 10.]

Effective date—2011 c 31: See note following RCW 48.15.010.

Effective date—Expiration date—2010 c 230: See RCW 48.164.900 and 48.164.901.

48.15.040 "Surplus line" coverage. (Effective December 31, 2016.) If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated as "surplus lines," may be procured from unauthorized insurers subject to the following conditions:

(1) The insurance must be procured through a licensed surplus line broker under this chapter. If the insurance is property and casualty insurance, except industrial insurance under Title 51 RCW, then the insurance must be procured under the laws and rules of the insured's home state.

(2) The insurance must not be procurable, after diligent effort has been made to do so from among a majority of the insurers authorized to transact that kind of insurance in this state.

(3) Coverage shall not be procured from an unauthorized insurer for the purpose of securing a lower premium rate than would be accepted by any authorized insurer nor to secure any other competitive advantage.

(4) The commissioner may by regulation establish the degree of effort required to comply with subsections (2) and (3) of this section.

(5) At the time of procuring the insurance the surplus line broker must certify to the accuracy of the facts support-

ing the surplus line broker's diligent effort required in subsections (2) and (3) of this section.

(a) The certification must set forth the facts supporting the surplus line broker's diligent effort.

(b) The certification must state that under the penalty of suspension or revocation of the surplus line broker's license the facts contained in the certification are true and correct.

(c) The certification may be in electronic, digital, or another format as designated by the commissioner.

(d) The certification must be filed with the commissioner within sixty days after the insurance is procured. [2011 c 31 § 3; 1983 1st ex.s. c 32 § 4; 1947 c 79 § .15.04; Rem. Supp. 1947 § 45.15.04.]

Effective date—2011 c 31 § 3: "Section 3 of this act takes effect December 31, 2016." [2011 c 31 § 11.]

48.15.043 Diligent effort requirement—Exempt commercial purchaser.

A surplus line broker seeking to procure from or place insurance with an unauthorized insurer for an exempt commercial purchaser is not required to satisfy the diligent effort requirement set forth in RCW 48.15.040 when:

(1) The surplus line broker or referring insurance producer procuring or placing the surplus line insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) The exempt commercial purchaser has subsequently requested in writing the surplus line broker or referring insurance producer to procure or place such insurance from an unauthorized insurer.

(3) Records of the surplus line broker's satisfaction of the requirements of this section must be maintained in compliance with RCW 48.15.100. [2011 c 31 § 5.]

Effective date—2011 c 31: See note following RCW 48.15.010.

48.15.090 Solvent insurer required—Rules. (1) A surplus line broker must not knowingly place surplus line insurance with insurers unsound financially. The surplus line broker must ascertain the financial condition of the unauthorized insurer, and maintain written evidence thereof, before placing insurance therewith. The surplus line broker may only so insure with:

(a)(i) Any foreign insurer:

(A) That is authorized to write the kind of insurance in its domiciliary jurisdiction; and

(B) Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:

(I) The minimum capital and surplus requirements under the laws of this state; or

(II) Fifteen million dollars.

(ii) The requirements of (a)(i)(B) of this subsection may be satisfied by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the commissioner. The finding must be based upon factors such as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The commissioner

is prohibited from making an affirmative finding of acceptability when the foreign insurer's capital and surplus is less than four million five hundred thousand dollars; or

(b) Any alien insurer that is listed on the quarterly listing of alien insurers maintained by the international insurers department of the national association of insurance commissioners.

(2) The commissioner may, by rule, prescribe the terms under which the foregoing financial requirements may be waived in circumstances where insurance cannot be otherwise procured on risks located in this state.

(3) For any violation of this section the surplus line broker may be fined not less than one hundred dollars or more than five thousand dollars, and in addition to or in lieu thereof the surplus line broker's license may be revoked, suspended, or nonrenewed. [2011 c 31 § 6; 1997 c 89 § 1; 1994 c 86 § 2; 1991 sp.s. c 5 § 2; 1980 c 102 § 4; 1975 1st ex.s. c 266 § 6; 1969 ex.s. c 241 § 10; 1955 c 303 § 5; 1947 c 79 § .15.09; Rem. Supp. 1947 § 45.15.09.]

Effective date—2011 c 31: See note following RCW 48.15.010.

Additional notes found at www.leg.wa.gov

48.15.110 Broker's annual statement. (1) Each surplus line broker must on or before the first day of March of each year file with the commissioner a verified statement of all surplus line insurance transacted by him or her during the preceding calendar year.

(2) The statement must be in a form and format as prescribed by the commissioner and must show:

(a) Aggregate of net premiums; and

(b) Additional information as required by the commissioner.

(3) This section does not apply to property and casualty insurance procured by the surplus line broker when the insured's home state is a state other than this state. [2011 c 31 § 7; 2009 c 549 § 7058; 1955 c 303 § 7; 1947 c 79 § .15.11; Rem. Supp. 1947 § 45.15.11.]

Effective date—2011 c 31: See note following RCW 48.15.010.

48.15.120 Premium tax—Surplus lines. (1) On or before the first day of March of each year each surplus line broker must remit to the state treasurer through the commissioner a tax on the premiums, exclusive of sums collected to cover federal and state taxes and examination fees, on surplus line insurance subject to tax transacted by him or her during the preceding calendar year as shown by his or her annual statement filed with the commissioner, and at the same rate as is applicable to the premiums of authorized foreign insurers under this code. The tax when collected must be credited to the general fund.

(2) For property and casualty insurance other than industrial insurance under Title 51 RCW, if this state is the insured's home state, the tax so payable must be computed upon the entire premium under subsection (1) of this section, without regard to whether the policy covers risks or exposures that are located in this state.

(3) For all other lines of insurance, if a surplus line policy covers risks or exposures only partially in this state, the tax so payable must be computed upon the proportion of the premium that is properly allocable to the risks or exposures

located in this state. [2011 c 31 § 8; 2009 c 549 § 7059; 1947 c 79 § .15.12; Rem. Supp. 1947 § 45.15.12.]

Application—2011 c 31 § 8: "Section 8 of this act applies to all surplus line insurance policies with an effective date on or after July 21, 2011." [2011 c 31 § 9.]

Effective date—2011 c 31: See note following RCW 48.15.010.

48.15.150 Legal process against surplus line insurer.

(1) For any cause of action arising in this state under any contract issued as a surplus line contract under this chapter, an unauthorized insurer must be sued in the superior court of the county in which the cause of action arose.

(2) An unauthorized insurer issuing a policy under this chapter has authorized service of process against it in the manner prescribed under RCW 48.02.200. Any policy must contain a provision designating the commissioner as the person upon whom service of process may be made.

(3) The insurer has forty days from the date of the service upon the commissioner within which to plead, answer, or otherwise defend the action. Upon service of process upon the commissioner in accordance with this section, the court has jurisdiction in personam of the insurer. [2011 c 47 § 9; 1979 ex.s. c 199 § 4; 1963 c 195 § 16; 1955 c 303 § 8; 1947 c 79 § .15.15; Rem. Supp. 1947 § 45.15.15.]

Chapter 48.17 RCW

INSURANCE PRODUCERS, TITLE INSURANCE AGENTS, AND ADJUSTERS

Sections

48.17.380 Adjusters—Application form—Qualifications for license—Bond.

48.17.380 Adjusters—Application form—Qualifications for license—Bond.

(1) Application for a license to be an adjuster must be made to the commissioner upon forms furnished by the commissioner. As a part of or in connection with the application, an individual applicant must furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check, personal history, experience, business record, purposes, and other pertinent facts, as the commissioner may reasonably require. If, in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges must be paid to the commissioner's office by the applicant.

(2) Any person willfully misrepresenting any fact required to be disclosed in any application shall be liable to penalties as provided by this code.

(3) The commissioner licenses as an adjuster only an individual or business entity which has otherwise complied with this code and the individual or responsible officer of the business entity has furnished evidence satisfactory to the commissioner that the individual or responsible officer of the business entity is qualified as follows:

(a) Is eighteen or more years of age;

(b) Is a bona fide resident of this state, or is a resident of a state which will permit residents of this state to act as adjusters in such other state;

(c) Is a trustworthy person;

(d) Has had experience or special education or training with reference to the handling of loss claims under insurance contracts, of sufficient duration and extent reasonably to make the individual or responsible officer of the business entity competent to fulfill the responsibilities of an adjuster;

(e) Has successfully passed any examination as required under this chapter;

(f) If for a public adjuster's license, has filed the bond required by RCW 48.17.430;

(g) If a nonresident business entity, has designated an individual licensed adjuster responsible for the business entity's compliance with the insurance laws and rules of this state.

(4)(a) Each licensed nonresident adjuster, by application for and issuance of a license, has appointed the commissioner as the adjuster's attorney to receive service of legal process against the adjuster in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service on the adjuster.

(b) The appointment of the commissioner as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the adjuster, and remains in effect for as long as there could be any cause of action against the adjuster arising out of the adjuster's transactions in this state. The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

(5) The commissioner may require any documents reasonably necessary to verify the information contained in an application and may, from time to time, require any licensed adjuster to produce the information called for in an application for a license. [2011 c 47 § 10; 2009 c 162 § 23; 2007 c 117 § 18; 1981 c 339 § 15; 1971 ex.s. c 292 § 48; 1947 c 79 § .17.38; Rem. Supp. 1947 § 45.17.38.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Additional notes found at www.leg.wa.gov

Chapter 48.18 RCW

THE INSURANCE CONTRACT

Sections

48.18.430 Exemption of proceeds, commutation—Annuities.

48.18.430 Exemption of proceeds, commutation—Annuities. (1) The benefits, rights, privileges, and options under any annuity contract that are due the annuitant who paid the consideration for the annuity contract are not subject to execution and the annuitant may not be compelled to exercise those rights, powers, or options, and creditors are not allowed to interfere with or terminate the contract, except:

(a) As to amounts paid for or as premium on an annuity with intent to defraud creditors, with interest thereon, and of which the creditor has given the insurer written notice at its home office prior to making the payments to the annuitant out of which the creditor seeks to recover. The notice must specify the amount claimed or the facts that will enable the insurer to determine the amount, and must set forth the facts that will

enable the insurer to determine the insurance or annuity contract, the person insured or annuitant and the payments sought to be avoided on the basis of fraud.

(b) The total exemption of benefits presently due and payable to an annuitant periodically or at stated times under all annuity contracts may not at any time exceed three thousand dollars per month for the length of time represented by the installments, and a periodic payment in excess of three thousand dollars per month is subject to garnishee execution to the same extent as are wages and salaries.

(c) If the total benefits presently due and payable to an annuitant under all annuity contracts at any time exceeds payment at the rate of three thousand dollars per month, then the court may order the annuitant to pay to a judgment creditor or apply on the judgment, in installments, the portion of the excess benefits that the court determines to be just and proper, after due regard for the reasonable requirements of the judgment debtor and the judgment debtor's dependent family, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

(2) The benefits, rights, privileges, or options accruing under an annuity contract to a beneficiary or assignee are not transferable or subject to commutation, and if the benefits are payable periodically or at stated times, the same exemptions and exceptions contained in this section for the annuitant apply to the beneficiary or assignee.

(3) An annuity contract within the meaning of this section is any obligation to pay certain sums at stated times, during life or lives, or for a specified term or terms, issued for a valuable consideration, regardless of whether or not the sums are payable to one or more persons, jointly or otherwise, but does not include payments under life insurance contracts at stated times during life or lives, or for a specified term or terms. [2011 c 162 § 4; 2005 c 223 § 10; 1949 c 190 § 25; 1947 c 79 § .18.43; Rem. Supp. 1949 § 45.18.43.]

Chapter 48.20 RCW

DISABILITY INSURANCE

Sections

48.20.025 Schedule of rates for individual health benefit plans—Loss ratio—Definitions. (*Effective January 1, 2012.*)

48.20.389 Prescribed, self-administered anticancer medication.

48.20.435 Option to cover dependents under age twenty-six.

48.20.025 Schedule of rates for individual health benefit plans—Loss ratio—Definitions. (*Effective January 1, 2012.*) (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the insurer of health care services, as defined in RCW 48.43.005, provided to a policyholder or paid to or on behalf of the policyholder in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for a policyholder.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Declination rate" for an insurer means the percentage of the total number of applicants for individual health benefit plans received by that insurer in the aggregate in the applicable year which are not accepted for enrollment by that insurer based on the results of the standard health questionnaire administered pursuant to RCW 48.43.018(2)(a).

(d) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(e) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(f) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(g) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) An insurer must file supporting documentation of its method of determining the rates charged for its individual health benefit plans. At a minimum, the insurer must provide the following supporting documentation:

(a) A description of the insurer's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the insurer's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard of seventy-four percent, minus the premium tax rate applicable to the insurer's individual health benefit plans under RCW 48.14.020. [2011 c 314 § 10; 2008 c 303 § 4; 2003 c 248 § 8; 2001 c 196 § 1; 2000 c 79 § 3.]

Effective date—2011 c 314 §§ 10-12: "Sections 10 through 12 of this act take effect January 1, 2012." [2011 c 314 § 19.]

Effective date—2001 c 196: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2001]." [2001 c 196 § 14.]

Additional notes found at www.leg.wa.gov

48.20.389 Prescribed, self-administered anticancer medication. (1) Each health plan issued or renewed on or after January 1, 2012, that provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility as defined in *RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy. [2011 c 159 § 3.]

***Reviser's note:** RCW 48.43.005 was amended by 2011 c 314 § 3 and by 2011 c 315 § 2, changing subsections (15) and (16) to subsections (20) and (21).

Findings—2011 c 159: See note following RCW 41.05.175.

48.20.435 Option to cover dependents under age twenty-six. Any disability insurance contract that provides coverage for a subscriber's dependent must offer the option of covering any dependent under the age of twenty-six. [2011 c 314 § 1; 2007 c 259 § 19.]

Effective date—2007 c 259 §§ 18-22: See note following RCW 41.05.095.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Chapter 48.21 RCW

GROUP AND BLANKET DISABILITY INSURANCE

Sections

48.21.010	"Group disability insurance" defined—Issuance.
48.21.157	Option to cover dependents under age twenty-six.
48.21.223	Prescribed, self-administered anticancer medication.
48.21.270	Conversion policy—Restrictions and requirements—Rules.

48.21.010 "Group disability insurance" defined—Issuance. (1) Group disability insurance is that form of disability insurance, including stop loss insurance as defined in RCW 48.11.030, provided by a master policy issued to an employer, to a trustee appointed by an employer or employers, or to an association of employers formed for purposes other than obtaining such insurance, covering, with or without their dependents, the employees, or specified categories of the employees, of such employers or their subsidiaries or affiliates, or issued to a labor union, or to an association of employees formed for purposes other than obtaining such insurance, covering, with or without their dependents, the members, or specified categories of the members, of the labor union or association, or issued pursuant to RCW 48.21.030. Group disability insurance includes the following groups that qualify for group life insurance:

RCW 48.24.020, 48.24.035, 48.24.040, 48.24.045, 48.24.050, 48.24.060, 48.24.070, 48.24.080, 48.24.090, and 48.24.095. A group under RCW 48.24.027 does not qualify as a group for the purposes of this chapter.

(2) Group disability insurance for lines of coverage identified in *RCW 48.43.005(19) (e), (h), and (k) offered to a resident of this state under a group disability insurance policy may be issued to a group other than the groups described in subsection (1) of this section subject to the requirements in this subsection.

(a) A group disability insurance policy offered under this subsection may not be delivered in this state unless the commissioner finds that:

(i) The issuance of the group policy is not contrary to the best interest of the public;

(ii) The issuance of the group policy would result in economies of acquisition or administration; and

(iii) The benefits are reasonable in relation to the premium charged.

(b) A group disability insurance coverage may not be offered under this subsection in this state by an insurer under a policy issued in another state unless the commissioner or

the insurance commissioner of another state having requirements substantially similar to those contained in this subsection has made a determination that the requirements have been met. [2011 c 81 § 1; 2010 c 13 § 3; 1992 c 226 § 2; 1949 c 190 § 27; 1947 c 79 § .21.01; Rem. Supp. 1949 § 45.21.01.]

***Reviser's note:** RCW 48.43.005 was amended by 2011 c 314 § 3 and by 2011 c 315 § 2, changing subsection (19) to subsection (24).

Additional notes found at www.leg.wa.gov

48.21.157 Option to cover dependents under age twenty-six. Any group disability insurance contract or blanket disability insurance contract that provides coverage for a participating member's dependent must offer each participating member the option of covering any dependent under the age of twenty-six. [2011 c 314 § 17; 2007 c 259 § 20.]

Effective date—2007 c 259 §§ 18-22: See note following RCW 41.05.095.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.21.223 Prescribed, self-administered anticancer medication. (1) Each health plan issued or renewed on or after January 1, 2012, that provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility as defined in *RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy. [2011 c 159 § 4.]

***Reviser's note:** RCW 48.43.005 was amended by 2011 c 314 § 3 and by 2011 c 315 § 2, changing subsections (15) and (16) to subsections (20) and (21).

Findings—2011 c 159: See note following RCW 41.05.175.

48.21.270 Conversion policy—Restrictions and requirements—Rules. (1) An insurer shall not require proof of insurability as a condition for issuance of the conversion policy.

(2) A conversion policy may not contain an exclusion for preexisting conditions for any applicant who is under age nineteen. For policies issued to those age nineteen and older, an exclusion for a preexisting condition is permitted only to the extent that a waiting period for a preexisting condition has not been satisfied under the group policy.

(3) An insurer must offer at least three policy benefit plans that comply with the following:

(a) A major medical plan with a five thousand dollar deductible per person;

(b) A comprehensive medical plan with a five hundred dollar deductible per person; and

(c) A basic medical plan with a one thousand dollar deductible per person.

(4) The insurance commissioner may revise the deductible amounts in subsection (3) of this section from time to time to reflect changing health care costs.

(5) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion policies.

(6) The commissioner shall adopt rules to establish specific standards for conversion policy provisions. These rules may include but are not limited to:

(a) Terms of renewability;

(b) Nonduplication of coverage;

(c) Benefit limitations, exceptions, and reductions; and

(d) Definitions of terms. [2011 c 314 § 2; 1984 c 190 § 4.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

Chapter 48.31 RCW

MERGERS, REHABILITATION, LIQUIDATION, SUPERVISION

Sections

48.31.105 Conduct of proceedings—Requirement to cooperate—Definitions—Violations—Penalties.

48.31.105 Conduct of proceedings—Requirement to cooperate—Definitions—Violations—Penalties. (1) An officer, manager, director, trustee, owner, employee, or agent of an insurer or other person with authority over or in charge of a segment of the insurer's affairs shall cooperate with the commissioner in a proceeding under this chapter or an investigation preliminary to the proceeding. The term "person" as used in this section includes a person who exercises control directly or indirectly over activities of the insurer through a holding company or other affiliate of the insurer. "To cooperate" as used in this section includes the following:

(a) To reply promptly in writing to an inquiry from the commissioner requesting such a reply; and

(b) To make available to the commissioner books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his or her possession, custody, or control.

(2) A person may not obstruct or interfere with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental thereto.

(3) This section does not abridge existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

(4) A person included within subsection (1) of this section who fails to cooperate with the commissioner, or a person who obstructs or interferes with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental thereto, or who violates an order the commissioner issued validly under this chapter may:

(a) Be guilty of a gross misdemeanor and sentenced to pay a fine not exceeding ten thousand dollars or to undergo imprisonment for a term of not more than three hundred sixty-four days, or both; or

(b) After a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed ten thousand dollars and be subject further to the revocation or suspension of insurance licenses issued by the commissioner. [2011 c 96 § 38; 2003 c 53 § 272; 1993 c 462 § 58.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

Additional notes found at www.leg.wa.gov

Chapter 48.36A RCW

FRATERNAL BENEFIT SOCIETIES

Sections

48.36A.350 Service of process upon commissioner.
48.36A.360 Penalties.

48.36A.350 Service of process upon commissioner.

(1) Every society authorized to do business in this state must appoint the commissioner as its attorney to receive service of, and upon whom must be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes service upon the society.

(2) With the appointment the society must designate the person to whom the commissioner must forward legal process so served upon him or her.

(3) The appointment of the commissioner as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the society, and remains in effect as long as there is in force in this state any contract made by the society or liabilities or duties arising therefrom.

(4) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200. [2011 c 47 § 11; 1987 c 366 § 35.]

48.36A.360 Penalties. (1) Any person who wilfully makes a false or fraudulent statement in or relating to an application for membership or for the purpose of obtaining money from or a benefit in any society, shall upon conviction be fined not less than one hundred dollars nor more than five hundred dollars or imprisonment in the county jail not less than thirty days nor more than three hundred sixty-four days, or both.

(2) Any person who wilfully makes a false or fraudulent statement in any verified report or declaration under oath required or authorized by this chapter, or of any material fact or thing contained in a sworn statement concerning the death or disability of an insured for the purpose of procuring payment of a benefit named in the certificate, shall be guilty of false swearing and shall be subject to the penalties under RCW 9A.72.040.

(3) Any person who solicits membership for, or in any manner assists in procuring membership in, any society not licensed to do business in this state shall be guilty of a misdemeanor and upon conviction be fined not less than fifty dollars nor more than two hundred dollars.

(4) Any person guilty of a wilful violation of, or neglect or refusal to comply with, the provisions of this chapter for which a penalty is not otherwise prescribed, shall upon conviction, be subject to a fine not exceeding two hundred dollars. [2011 c 96 § 39; 1987 c 366 § 36.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Chapter 48.37 RCW

MARKET CONDUCT OVERSIGHT

Sections

48.37.060 Market conduct examinations—Procedures—Final orders—Fees.

48.37.060 Market conduct examinations—Procedures—Final orders—Fees. (1) When the commissioner determines that other market conduct actions identified in RCW 48.37.040(4)(a) have not sufficiently addressed issues raised concerning company activities in Washington state, the commissioner has the discretion to conduct market conduct examinations in accordance with the NAIC market conduct uniform examination procedures and the NAIC market regulation handbook.

(2)(a) In lieu of an examination of an insurer licensed in this state, the commissioner shall accept an examination report of another state, unless the commissioner determines that the other state does not have laws substantially similar to those of this state, or does not have a market oversight system that is comparable to the market conduct oversight system set forth in this law.

(b) The commissioner's determination under (a) of this subsection is discretionary with the commissioner and is not subject to appeal.

(c) If the insurer to be examined is part of an insurance holding company system, the commissioner may also seek to simultaneously examine any affiliates of the insurer under common control and management which are licensed to write the same lines of business in this state.

(3) Before commencement of a market conduct examination, market conduct oversight personnel shall prepare a work plan consisting of the following:

- (a) The name and address of the insurer being examined;
- (b) The name and contact information of the examiner-in-charge;
- (c) The name of all market conduct oversight personnel initially assigned to the market conduct examination;
- (d) The justification for the examination;
- (e) The scope of the examination;
- (f) The date the examination is scheduled to begin;
- (g) Notice of any noninsurance department personnel who will assist in the examination;
- (h) A time estimate for the examination;
- (i) A budget for the examination if the cost of the examination is billed to the insurer; and
- (j) An identification of factors that will be included in the billing if the cost of the examination is billed to the insurer.

(4)(a) Within ten days of the receipt of the information contained in subsection (3) of this section, insurers may request the commissioner's discretionary review of any alleged conflict of interest, pursuant to RCW 48.37.090(2), of market conduct oversight personnel and noninsurance department personnel assigned to a market conduct examination. The request for review shall specifically describe the alleged conflict of interest in the proposed assignment of any person to the examination.

(b) Within five business days of receiving a request for discretionary review of any alleged conflict of interest in the proposed assignment of any person to a market conduct

examination, the commissioner or designee shall notify the insurer of any action regarding the assignment of personnel to a market conduct examination based on the insurer's allegation of conflict of interest.

(5) Market conduct examinations shall, to the extent feasible, use desk examinations and data requests before an on-site examination.

(6) Market conduct examinations shall be conducted in accordance with the provisions set forth in the NAIC market regulation handbook and the NAIC market conduct uniform examinations procedures, subject to the precedence of the provisions of chapter 82, Laws of 2007.

(7) The commissioner shall use the NAIC standard data request.

(8) Announcement of the examination shall be sent to the insurer and posted on the NAIC's examination tracking system as soon as possible but in no case later than sixty days before the estimated commencement of the examination, except where the examination is conducted in response to extraordinary circumstances as described in RCW 48.37.050(2)(a). The announcement sent to the insurer shall contain the examination work plan and a request for the insurer to name its examination coordinator.

(9) If an examination is expanded significantly beyond the original reasons provided to the insurer in the notice of the examination required by subsection (3) of this section, the commissioner shall provide written notice to the insurer, explaining the expansion and reasons for the expansion. The commissioner shall provide a revised work plan if the expansion results in significant changes to the items presented in the original work plan required by subsection (3) of this section.

(10) The commissioner shall conduct a preexamination conference with the insurer examination coordinator and key personnel to clarify expectations at least thirty days before commencement of the examination, unless otherwise agreed by the insurer and the commissioner.

(11) Before the conclusion of the field work for market conduct examination, the examiner-in-charge shall review examination findings to date with insurer personnel and schedule an exit conference with the insurer, in accordance with procedures in the NAIC market regulation handbook.

(12)(a) No later than sixty days after completion of each market conduct examination, the commissioner shall make a full written report of each market conduct examination containing only facts ascertained from the accounts, records, and documents examined and from the sworn testimony of individuals, and such conclusions and recommendations as may reasonably be warranted from such facts.

(b) The report shall be certified by the commissioner or by the examiner-in-charge of the examination, and shall be filed in the commissioner's office subject to (c) of this subsection.

(c) The commissioner shall furnish a copy of the market conduct examination report to the person examined not less than ten days and, unless the time is extended by the commissioner, not more than thirty days prior to the filing of the report for public inspection in the commissioner's office. If the person so requests in writing within such period, the commissioner shall hold a hearing to consider objections of such person to the report as proposed, and shall not so file the

report until after such hearing and until after any modifications in the report deemed necessary by the commissioner have been made.

(d) Within thirty days of the end of the period described in (c) of this subsection, unless extended by order of the commissioner, the commissioner shall consider the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers and enter an order:

(i) Adopting the market conduct examination report as filed or with modification or corrections. If the market conduct examination report reveals that the company is operating in violation of any law, rule, or order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure that violation;

(ii) Rejecting the market conduct examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refiling under this subsection; or

(iii) Calling for an investigatory hearing with no less than twenty days' notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

(e) All orders entered under (d) of this subsection must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the market conduct examination report, relevant examiner work papers, and any written submissions or rebuttals. The order is considered a final administrative decision and may be appealed under the administrative procedure act, chapter 34.05 RCW, and must be served upon the company by certified mail or certifiable electronic means, together with a copy of the adopted examination report. A copy of the adopted examination report must be sent by certified mail or certifiable electronic means to each director at the director's residential address or to a personal e-mail account.

(f)(i) Upon the adoption of the market conduct examination report under (d) of this subsection, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of five days except that the order may be disclosed to the person examined. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(ii) If the commissioner determines that regulatory action is appropriate as a result of any market conduct examination, he or she may initiate any proceedings or actions as provided by law.

(iii) Nothing contained in this subsection requires the commissioner to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(g) The insurer's response shall be included in the commissioner's order adopting the final report as an exhibit to the order. The insurer is not obligated to submit a response.

(13) The commissioner may withhold from public inspection any examination or investigation report for so long as he or she deems it advisable.

(14)(a) Market conduct examinations within this state of any insurer domiciled or having its home offices in this state,

other than a title insurer, made by the commissioner or the commissioner’s examiners and employees shall, except as to fees, mileage, and expense incurred as to witnesses, be at the expense of the state.

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

(c) When making a market conduct examination under this chapter, the commissioner may contract, in accordance with applicable state contracting procedures, for qualified attorneys, appraisers, independent certified public accountants, contract actuaries, and other similar individuals who are independently practicing their professions, even though those persons may from time to time be similarly employed or retained by persons subject to examination under this chapter, as examiners as the commissioner deems necessary for the efficient conduct of a particular examination. The compensation and per diem allowances paid to such contract persons shall be reasonable in the market and time incurred, shall not exceed one hundred twenty-five percent of the compensation and per diem allowances for examiners set forth in the guidelines adopted by the national association of insurance commissioners, unless the commissioner demonstrates that one hundred twenty-five percent is inadequate under the circumstances of the examination, and subject to the provisions of (a) of this subsection.

(d)(i) The person examined and liable shall reimburse the state upon presentation of an itemized statement thereof, for the actual travel expenses of the commissioner’s examiners, their reasonable living expenses allowance, and their per diem compensation, including salary and the employer’s cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem, salary, and expenses for employees examining insurers domiciled outside the state of Washington shall be established by the commissioner on the basis of the national association of insurance commissioner’s recommended salary and expense schedule for zone examiners, or the salary schedule established by the human resources director and the expense schedule established by the office of financial management, whichever is higher. A domestic title insurer shall pay the examination expense and costs to the commissioner as itemized and billed by the commissioner.

(ii) The commissioner or the commissioner’s examiners shall not receive or accept any additional emolument on account of any examination.

(iii) Market conduct examination fees subject to being reimbursed by an insurer shall be itemized and bills shall be provided to the insurer on a monthly basis for review prior to submission for payment, or as otherwise provided by state law.

(e) Nothing contained in this chapter limits the commissioner’s authority to terminate or suspend any examination in order to pursue other legal or regulatory action under the insurance laws of this state. Findings of fact and conclusions

made pursuant to any examination are prima facie evidence in any legal or regulatory action.

(f) The commissioner shall maintain active management and oversight of market conduct examination costs, including costs associated with the commissioner’s own examiners, and with retaining qualified contract examiners necessary to perform an examination. Any agreement with a contract examiner shall:

(i) Clearly identify the types of functions to be subject to outsourcing;

(ii) Provide specific timelines for completion of the outsourced review;

(iii) Require disclosure to the insurer of contract examiners’ recommendations;

(iv) Establish and use a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees; and

(v) Require disclosure of the terms of the contracts with the outside consultants that will be used, specifically the fees and/or hourly rates that can be charged.

(g) The commissioner, or the commissioner’s designee, shall review and affirmatively endorse detailed billings from the qualified contract examiner before the detailed billings are sent to the insurer. [2011 1st sp.s. c 43 § 460; 2008 c 100 § 2; 2007 c 82 § 8.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Chapter 48.41 RCW

HEALTH INSURANCE COVERAGE ACCESS ACT

Sections

48.41.060	Board powers and duties.
48.41.080	Pool administrator—Selection, term, duties, pay.
48.41.100	Eligibility for coverage.
48.41.110	Policy coverage—Eligible expenses, cost containment, limits—Explanatory brochure.
48.41.140	Coverage for children, dependents.

48.41.060 Board powers and duties. (1) The board shall have the general powers and authority granted under the laws of this state to insurance companies, health care service contractors, and health maintenance organizations, licensed or registered to offer or provide the kinds of health coverage defined under this title. In addition thereto, the board shall:

(a) Designate or establish the standard health questionnaire to be used under RCW 48.41.100 and 48.43.018, including the form and content of the standard health questionnaire and the method of its application. The questionnaire must provide for an objective evaluation of an individual’s health status by assigning a discreet measure, such as a system of point scoring to each individual. The questionnaire must not contain any questions related to pregnancy, and pregnancy shall not be a basis for coverage by the pool. The questionnaire shall be designed such that it is reasonably expected to identify the eight percent of persons who are the most costly to treat who are under individual coverage in health benefit plans, as defined in RCW 48.43.005, in Washington state or are covered by the pool, if applied to all such persons;

(b) Obtain from a member of the American academy of actuaries, who is independent of the board, a certification that

the standard health questionnaire meets the requirements of (a) of this subsection;

(c) Approve the standard health questionnaire and any modifications needed to comply with this chapter. The standard health questionnaire shall be submitted to an actuary for certification, modified as necessary, and approved at least every thirty-six months unless at the time when certification is required the pool will be discontinued before the end of the succeeding thirty-six month period. The designation and approval of the standard health questionnaire by the board shall not be subject to review and approval by the commissioner. The standard health questionnaire or any modification thereto shall not be used until ninety days after public notice of the approval of the questionnaire or any modification thereto, except that the initial standard health questionnaire approved for use by the board after March 23, 2000, may be used immediately following public notice of such approval;

(d) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, claim reserve formulas and any other actuarial functions appropriate to the operation of the pool. Rates shall not be unreasonable in relation to the coverage provided, the risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices consistent with Washington state individual plan rating requirements under RCW 48.44.022 and 48.46.064;

(e)(i) Assess members of the pool in accordance with the provisions of this chapter, and make advance interim assessments as may be reasonable and necessary for the organizational or interim operating expenses. Any interim assessments will be credited as offsets against any regular assessments due following the close of the year.

(ii) Self-funded multiple employer welfare arrangements are subject to assessment under this subsection only in the event that assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing assessments on these arrangements before imposing the assessment. Once the legality of the assessments has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these assessments.

(iii) If there has not been a final determination of the legality of these assessments, then beginning on the earlier of (A) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (B) April 1, 2006, the arrangement shall deposit the assessments imposed by this subsection into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the board;

(f) Issue policies of health coverage in accordance with the requirements of this chapter;

(g) Establish procedures for the administration of the premium discount provided under RCW 48.41.200(3)(a)(iii);

(h) Contract with the Washington state health care authority for the administration of the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii);

(i) Set a reasonable fee to be paid to an insurance producer licensed in Washington state for submitting an acceptable application for enrollment in the pool; and

(j) Provide certification to the commissioner when assessments will exceed the threshold level established in RCW 48.41.037.

(2) In addition thereto, the board may:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter including the authority, with the approval of the commissioner, to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(b) Sue or be sued, including taking any legal action as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(c) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool; and

(d) Conduct periodic audits to assure the general accuracy of the financial data submitted to the pool, and the board shall cause the pool to have an annual audit of its operations by an independent certified public accountant.

(3) Nothing in this section shall be construed to require or authorize the adoption of rules under chapter 34.05 RCW. [2011 c 314 § 13; 2009 c 555 § 2; 2008 c 217 § 47; 2005 c 7 § 2; 2004 c 260 § 26; 2000 c 79 § 9; 1997 c 337 § 5; 1997 c 231 § 211; 1989 c 121 § 3; 1987 c 431 § 6.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Effective date—2005 c 7: See note following RCW 48.14.0201.

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Report on implementation of 1987 c 431: "The board shall report to the commissioner and the appropriate committees of the legislature by April 1, 1990, on the implementation of this act. The report shall include information regarding enrollment, coverage utilization, cost, and any problems with the program and suggest remedies." [1987 c 431 § 26.]

Additional notes found at www.leg.wa.gov

48.41.080 Pool administrator—Selection, term, duties, pay. The board shall select an administrator through a competitive bidding process to administer the pool.

(1) The board shall evaluate bids based upon criteria established by the board, which shall include:

(a) The administrator's proven ability to handle health coverage;

(b) The efficiency of the administrator's claim-paying procedures;

(c) An estimate of the total charges for administering the plan; and

(d) The administrator's ability to administer the pool in a cost-effective manner.

(2) The administrator shall serve for a period of three years subject to removal for cause. At least six months prior to the expiration of each three-year period of service by the administrator, the board shall invite all interested parties, including the current administrator, to submit bids to serve as the administrator for the succeeding three-year period. Selection of the administrator for this succeeding period shall be made at least three months prior to the end of the current three-year period, unless at the time required for submission of bids pursuant to this subsection to the pool will be discontinued before the end of the succeeding thirty-six month period.

(3) The administrator shall perform such duties as may be assigned by the board including:

(a) Administering eligibility and administrative claim payment functions relating to the pool;

(b) Establishing a premium billing procedure for collection of premiums from covered persons. Billings shall be made on a periodic basis as determined by the board, which shall not be more frequent than a monthly billing;

(c) Performing all necessary functions to assure timely payment of benefits to covered persons under the pool including:

(i) Making available information relating to the proper manner of submitting a claim for benefits to the pool, and distributing forms upon which submission shall be made;

(ii) Taking steps necessary to offer and administer managed care benefit plans; and

(iii) Evaluating the eligibility of each claim for payment by the pool;

(d) Submission of regular reports to the board regarding the operation of the pool. The frequency, content, and form of the report shall be as determined by the board;

(e) Following the close of each accounting year, determination of net paid and earned premiums, the expense of administration, and the paid and incurred losses for the year and reporting this information to the board and the commissioner on a form as prescribed by the commissioner.

(4) The administrator shall be paid as provided in the contract between the board and the administrator for its expenses incurred in the performance of its services. [2011 c 314 § 14; 2000 c 79 § 10; 1997 c 231 § 212; 1989 c 121 § 5; 1987 c 431 § 8.]

Additional notes found at www.leg.wa.gov

48.41.100 Eligibility for coverage. (1)(a) The following persons who are residents of this state are eligible for pool coverage:

(i) Any person who provides evidence of a carrier's decision not to accept him or her for enrollment in an individual health benefit plan as defined in RCW 48.43.005 based upon, and within ninety days of the receipt of, the results of the standard health questionnaire designated by the board and administered by health carriers under RCW 48.43.018;

(ii) Any person who continues to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator pursuant to subsection (3) of this section;

(iii) Any person who resides in a county of the state where no carrier or insurer eligible under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool, and who makes direct application to the pool;

(iv) Any person becoming eligible for medicare before August 1, 2009, who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application;

(v) Any person becoming eligible for medicare on or after August 1, 2009, who does not have access to a reasonable choice of comprehensive medicare part C plans, as defined in (b) of this subsection, and who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application; and

(vi) Any person under the age of nineteen who does not have access to individual plan open enrollment or special enrollment, as defined in RCW 48.43.005, or the federal pre-existing condition insurance pool, at the time of application to the pool is eligible for the pool coverage.

(b) For purposes of (a)(v) of this subsection (1), a person does not have access to a reasonable choice of plans unless the person has a choice of health maintenance organization or preferred provider organization medicare part C plans offered by at least three different carriers that have had provider networks in the person's county of residence for at least five years. The plan options must include coverage at least as comprehensive as a plan F medicare supplement plan combined with medicare parts A and B. The plan options must also provide access to adequate and stable provider networks that make up-to-date provider directories easily accessible on the carrier web site, and will provide them in hard copy, if requested. In addition, if no health maintenance organization or preferred provider organization plan includes the health care provider with whom the person has an established care relationship and from whom he or she has received treatment within the past twelve months, the person does not have reasonable access.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than non-payment of premiums. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(b) Inmates of public institutions and those persons who become eligible for medical assistance after June 30, 2008, as defined in RCW 74.09.010. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(c) Any person who resides in a county of the state where any carrier or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool and who does not qualify for pool coverage based upon the results of the standard health questionnaire, or pursuant to subsection (1)(a)(iv) of this section.

(3) When a carrier or insurer regulated under chapter 48.15 RCW begins to offer an individual health benefit plan in a county where no carrier had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in a pool plan pursuant to subsection (1)(a)(iii) of this section in that county shall no longer be eligible for coverage under that plan pursuant to subsection (1)(a)(iii) of this section, but may continue to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator. The pool administrator shall offer to administer the questionnaire to each person no longer eligible for coverage under subsection (1)(a)(iii) of this section within thirty days of determining that he or she is no longer eligible;

(b) Losing eligibility for pool coverage under this subsection (3) does not affect a person's eligibility for pool coverage under subsection (1)(a)(i), (ii), or (iv) of this section; and

(c) The pool administrator shall provide written notice to any person who is no longer eligible for coverage under a pool plan under this subsection (3) within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options, either in or outside of the pool, available to the person; (iii) describe the procedures for the administration of the standard health questionnaire to determine the person's continued eligibility for coverage under subsection (1)(a)(ii) of this section; and (iv) describe the enrollment process for the available options outside of the pool.

(4) The board shall ensure that an independent analysis of the eligibility standards for the pool coverage is conducted, including examining the eight percent eligibility threshold, eligibility for medicaid enrollees and other publicly sponsored enrollees, and the impacts on the pool and the state budget. The board shall report the findings to the legislature by December 1, 2007. [2011 c 315 § 5; 2011 c 314 § 15; 2009 c 555 § 3; 2007 c 259 § 30; 2001 c 196 § 3; 2000 c 79 § 12; 1995 c 34 § 5; 1989 c 121 § 7; 1987 c 431 § 10.]

Reviser's note: This section was amended by 2011 c 314 § 15 and by 2011 c 315 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 315 §§ 5 and 6: "Sections 5 and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 11, 2011]." [2011 c 315 § 7.]

Intent—2011 c 315: See note following RCW 48.43.005.

Contingent effective date—2009 c 555 § 3: "Section 3 of this act takes effect if section 4, chapter 317, Laws of 2008 is null and void on July 26, 2009; otherwise section 3 of this act is null and void." [2009 c 555 § 6.]

Effective date—2007 c 259 § 30: "Section 30 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2007]." [2007 c 259 § 75.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—2001 c 196: See note following RCW 48.20.025.

Additional notes found at www.leg.wa.gov

48.41.110 Policy coverage—Eligible expenses, cost containment, limits—Explanatory brochure. (1) The pool shall offer one or more care management plans of coverage. Such plans may, but are not required to, include point of service features that permit participants to receive in-network benefits or out-of-network benefits subject to differential cost shares. The pool may incorporate managed care features into existing plans.

(2) The administrator shall prepare a brochure outlining the benefits and exclusions of pool policies in plain language. After approval by the board, such brochure shall be made reasonably available to participants or potential participants.

(3) The health insurance policies issued by the pool shall pay only reasonable amounts for medically necessary eligible health care services rendered or furnished for the diagnosis or treatment of covered illnesses, injuries, and conditions. Eligible expenses are the reasonable amounts for the health care services and items for which benefits are extended under a pool policy.

(4) The pool shall offer at least two policies, one of which will be a comprehensive policy that must comply with RCW 48.41.120 and must at a minimum include the following services or related items:

(a) Hospital services, including charges for the most common semiprivate room, for the most common private room if semiprivate rooms do not exist in the health care facility, or for the private room if medically necessary, including no less than a total of one hundred eighty inpatient days in a calendar year, and no less than thirty days inpatient care for alcohol, drug, or chemical dependency or abuse per calendar year;

(b) Professional services including surgery for the treatment of injuries, illnesses, or conditions, other than dental, which are rendered by a health care provider, or at the direction of a health care provider, by a staff of registered or licensed practical nurses, or other health care providers;

(c) No less than twenty outpatient professional visits for the diagnosis or treatment of alcohol, drug, or chemical dependency or abuse rendered during a calendar year by a state-certified chemical dependency program approved under chapter 70.96A RCW, or by one or more physicians, psychologists, or community mental health professionals, or, at the direction of a physician, by other qualified licensed health care practitioners;

(d) Drugs and contraceptive devices requiring a prescription;

(e) Services of a skilled nursing facility, excluding custodial and convalescent care, for not less than one hundred days in a calendar year as prescribed by a physician;

(f) Services of a home health agency;

(g) Chemotherapy, radioisotope, radiation, and nuclear medicine therapy;

(h) Oxygen;

(i) Anesthesia services;

(j) Prostheses, other than dental;

(k) Durable medical equipment which has no personal use in the absence of the condition for which prescribed;

(l) Diagnostic x-rays and laboratory tests;

(m) Oral surgery including at least the following: Fractures of facial bones; excisions of mandibular joints, lesions of the mouth, lip, or tongue, tumors, or cysts excluding treatment for temporomandibular joints; incision of accessory sinuses, mouth salivary glands or ducts; dislocations of the jaw; plastic reconstruction or repair of traumatic injuries occurring while covered under the pool; and excision of impacted wisdom teeth;

(n) Maternity care services;

(o) Services of a physical therapist and services of a speech therapist;

(p) Hospice services;

(q) Professional ambulance service to the nearest health care facility qualified to treat the illness or injury;

(r) Mental health services pursuant to RCW 48.41.220; and

(s) Other medical equipment, services, or supplies required by physician's orders and medically necessary and consistent with the diagnosis, treatment, and condition.

(5) The board shall design and employ cost containment measures and requirements such as, but not limited to, care coordination, provider network limitations, preadmission certification, and concurrent inpatient review which may make the pool more cost-effective.

(6) The pool benefit policy may contain benefit limitations, exceptions, and cost shares such as copayments, coinsurance, and deductibles that are consistent with managed care products, except that differential cost shares may be adopted by the board for nonnetwork providers under point of service plans. No limitation, exception, or reduction may be used that would exclude coverage for any disease, illness, or injury.

(7)(a) The pool may not reject an individual for health plan coverage based upon preexisting conditions of the individual or deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that it shall impose a six-month benefit waiting period for preexisting conditions for which medical advice was given, for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months before the effective date of coverage. The preexisting condition waiting period shall not apply to prenatal care services. The pool may not avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. Credit against the waiting period shall be as provided in subsection (8) of this section.

(b) The pool shall not impose any preexisting condition waiting period for any person under the age of nineteen.

(8)(a) Except as provided in (b) of this subsection, the pool shall credit any preexisting condition waiting period in its plans for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the new pool plan. For the person previously enrolled in a group health benefit plan, the pool must credit the aggregate of all periods of preceding coverage not separated by more than sixty-three days toward the waiting period of the new health plan. For the person previously enrolled in an individual health benefit plan other than a catastrophic health plan, the pool must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan.

(b) The pool shall waive any preexisting condition waiting period for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(9) If an application is made for the pool policy as a result of rejection by a carrier, then the date of application to the carrier, rather than to the pool, should govern for purposes of determining preexisting condition credit.

(10) The pool shall contract with organizations that provide care management that has been demonstrated to be effective and shall encourage enrollees who are eligible for care management services to participate. The pool may encourage the use of shared decision making and certified decision aids for preference-sensitive care areas. [2011 c 315 § 6. Prior: 2007 c 259 § 26; 2007 c 8 § 5; 2001 c 196 § 4; 2000 c 80 § 2; 2000 c 79 § 13; 1997 c 231 § 213; 1987 c 431 § 11.]

Effective date—2011 c 315 §§ 5 and 6: See note following RCW 48.41.100.

Intent—2011 c 315: See note following RCW 48.43.005.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—2007 c 8: See note following RCW 48.20.580.

Effective date—2001 c 196: See note following RCW 48.20.025.

Additional notes found at www.leg.wa.gov

48.41.140 Coverage for children, dependents. (1) Coverage shall provide that health insurance benefits are applicable to children of the person in whose name the policy is issued including adopted and newly born natural children. Coverage shall also include necessary care and treatment of medically diagnosed congenital defects and birth abnormalities. If payment of a specific premium is required to provide coverage for the child, the policy may require that notification of the birth or adoption of a child and payment of the required premium must be furnished to the pool within thirty-one days after the date of birth or adoption in order to have the coverage continued beyond the thirty-one day period. For purposes of this subsection, a child is deemed to be adopted, and benefits are payable, when the child is physically placed for purposes of adoption under the laws of this state with the person in whose name the policy is issued; and, when the per-

son in whose name the policy is issued assumes financial responsibility for the medical expenses of the child. For purposes of this subsection, "newly born" means, and benefits are payable, from the moment of birth.

(2) A pool policy shall provide that coverage of a dependent, person shall terminate when the person becomes twenty-six years of age: PROVIDED, That coverage of such person shall not terminate at age twenty-six while he or she is and continues to be both (a) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (b) chiefly dependent upon the person in whose name the policy is issued for support and maintenance, provided proof of such incapacity and dependency is furnished to the pool by the policyholder within thirty-one days of the dependent's attainment of age twenty-six and subsequently as may be required by the pool but not more frequently than annually after the two-year period following the dependent's attainment of age twenty-six. [2011 c 314 § 16; 2000 c 79 § 16; 1987 c 431 § 14.]

Additional notes found at www.leg.wa.gov

Chapter 48.43 RCW INSURANCE REFORM

Sections

48.43.005	Definitions.
48.43.008	Enrollment in employer-sponsored health plan—Person eligible for medical assistance.
48.43.009	Health care sharing ministries.
48.43.012	Individual health benefit plans—Preexisting conditions.
48.43.0121	Repealed.
48.43.0122	Individual health benefit plans—Persons under age nineteen.
48.43.081	Anatomic pathology services—Payment for services—Definitions.
48.43.517	Enrollment of child participating in medical assistance program—Employer-sponsored health plan.
48.43.530	Requirement for carriers to have a comprehensive grievance process—Carrier's duties—Procedures—Appeals—Rules.
48.43.535	Independent review of health care disputes—System for using certified independent review organizations—Rules.

48.43.005 Definitions. Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Adverse benefit determination" means a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit, including a denial, reduction, termination, or failure to provide or make payment that is based on a determination of an enrollee's or applicant's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.

(3) "Applicant" means a person who applies for enrollment in an individual health plan as the subscriber or an

enrollee, or the dependent or spouse of a subscriber or enrollee.

(4) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

(5) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(e).

(6) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

(7) "Catastrophic health plan" means:

(a) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand seven hundred fifty dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand five hundred dollars, both amounts to be adjusted annually by the insurance commissioner; and

(b) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least six thousand dollars, both amounts to be adjusted annually by the insurance commissioner; or

(c) Any health benefit plan that provides benefits for hospital inpatient and outpatient services, professional and prescription drugs provided in conjunction with such hospital inpatient and outpatient services, and excludes or substantially limits outpatient physician services and those services usually provided in an office setting.

In July 2008, and in each July thereafter, the insurance commissioner shall adjust the minimum deductible and out-of-pocket expense required for a plan to qualify as a catastrophic plan to reflect the percentage change in the consumer price index for medical care for a preceding twelve months, as determined by the United States department of labor. The adjusted amount shall apply on the following January 1st.

(8) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

(9) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(10) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

(11) "Dependent" means, at a minimum, the enrollee's legal spouse and dependent children who qualify for coverage under the enrollee's health benefit plan.

(12) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, who possesses an average knowledge of health and medicine,

could reasonably expect the absence of immediate medical attention to result in a condition (a) placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, (b) serious impairment to bodily functions, or (c) serious dysfunction of any bodily organ or part.

(13) "Emergency services" means a medical screening examination, as required under section 1867 of the social security act (42 U.S.C. 1395dd), that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate that emergency medical condition, and further medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under section 1867 of the social security act (42 U.S.C. 1395dd) to stabilize the patient. Stabilize, with respect to an emergency medical condition, has the meaning given in section 1867(e)(3) of the social security act (42 U.S.C. 1395dd(e)(3)).

(14) "Employee" has the same meaning given to the term, as of January 1, 2008, under section 3(6) of the federal employee retirement income security act of 1974.

(15) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(16) "Final external review decision" means a determination by an independent review organization at the conclusion of an external review.

(17) "Final internal adverse benefit determination" means an adverse benefit determination that has been upheld by a health plan or carrier at the completion of the internal appeals process, or an adverse benefit determination with respect to which the internal appeals process has been exhausted under the exhaustion rules described in RCW 48.43.530 and 48.43.535.

(18) "Grandfathered health plan" means a group health plan or an individual health plan that under section 1251 of the patient protection and affordable care act, P.L. 111-148 (2010) and as amended by the health care and education reconciliation act, P.L. 111-152 (2010) is not subject to subtitles A or C of the act as amended.

(19) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

(20) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under

chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

(21) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(22) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(23) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in the patient protection and affordable care act (P.L. 111-148).

(24) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

(a) Long-term care insurance governed by chapter 48.84 or 48.83 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Coverage supplemental to the coverage provided under chapter 55, Title 10, United States Code;

(d) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;

(e) Disability income;

(f) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(g) Workers' compensation coverage;

(h) Accident only coverage;

(i) Specified disease or illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance offered as an independent, noncoordinated benefit;

(j) Employer-sponsored self-funded health plans;

(k) Dental only and vision only coverage; and

(l) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(25) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

(26) "Open enrollment" means a period of time as defined in rule to be held at the same time each year, during which applicants may enroll in a carrier's individual health benefit plan without being subject to health screening or oth-

erwise required to provide evidence of insurability as a condition for enrollment.

(27) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(28) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(29) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

(30) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision, sole proprietor, or self-employed individual that is actively engaged in business that employed an average of at least one but no more than fifty employees, during the previous calendar year and employed at least one employee on the first day of the plan year, is not formed primarily for purposes of buying health insurance, and in which a bona fide employer-employee relationship exists. In determining the number of employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. A self-employed individual or sole proprietor who is covered as a group of one must also: (a) Have been employed by the same small employer or small group for at least twelve months prior to application for small group coverage, and (b) verify that he or she derived at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year, except a self-employed individual or sole proprietor in an agricultural trade or business, must have derived at least fifty-one percent of his or her income from the trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, for the previous taxable year.

(31) "Special enrollment" means a defined period of time of not less than thirty-one days, triggered by a specific qualifying event experienced by the applicant, during which applicants may enroll in the carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

(32) "Standard health questionnaire" means the standard health questionnaire designated under chapter 48.41 RCW.

(33) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

(34) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs. [2011 c 315 § 2; 2011 c 314 § 3. Prior: 2010 c 292 § 1; prior: 2008 c 145 § 20; 2008 c 144 § 1; prior: 2007 c 296 § 1; 2007 c 259 § 32; 2006 c 25 § 16; 2004 c 244 § 2; prior: 2001 c 196 § 5; 2001 c 147 § 1; 2000 c 79 § 18; prior: 1997 c 231 § 202; 1997 c 55 § 1; 1995 c 265 § 4.]

Reviser's note: This section was amended by 2011 c 314 § 3 and by 2011 c 315 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2011 c 315: "The federal patient protection and affordable care act (P.L. 111-148) prohibits insurance carriers from applying preexisting condition limitations for persons under age nineteen, beginning on or after September 23, 2010. The guidance from the United States department of health and human services provides some direction for the implementation of the new policy requirement, and the office of the insurance commissioner further clarified open enrollment requirements to help prevent disruption in the individual health insurance marketplace. It is the intent of this act to:

(1) Maintain access to individual plan options for persons under age nineteen; and

(2) Provide clarity for the establishment of open enrollment and special open enrollment periods that balance access to guaranteed issue coverage with efforts that protect market stability." [2011 c 315 § 1.]

Application—2010 c 292: "This act applies to policies issued or renewed on or after January 1, 2011." [2010 c 292 § 9.]

Contingent effective date—2010 c 292 §§ 1 and 2: "Sections 1 and 2 of this act take effect one hundred eighty days [September 29, 2010] after the date the insurance commissioner certifies to the secretary of the senate, the chief clerk of the house of representatives, and the code reviser's office that federal legislation has been signed into law by the President of the United States that includes guaranteed issue for individuals who purchase health coverage through the individual or small group markets." [2010 c 292 § 11.]

Severability—Effective date—2008 c 145: See RCW 48.83.900 and 48.83.901.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—2001 c 196: See note following RCW 48.20.025.

Additional notes found at www.leg.wa.gov

48.43.008 Enrollment in employer-sponsored health plan—Person eligible for medical assistance. When the health care authority determines that it is cost-effective to enroll a person eligible for medical assistance under chapter 74.09 RCW in an employer-sponsored health plan, a carrier shall permit the enrollment of the person in the health plan for which he or she is otherwise eligible without regard to any open enrollment period restrictions. [2011 1st sp.s. c 15 § 77; 2007 c 259 § 24.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.43.009 Health care sharing ministries. Health care sharing ministries are not health carriers as defined in RCW 48.43.005 or insurers as defined in RCW 48.01.050. For purposes of this section, "health care sharing ministry" has the same meaning as in 26 U.S.C. Sec. 5000A. [2011 c 314 § 18.]

48.43.012 Individual health benefit plans—Preexisting conditions. (1) No carrier may reject an individual for an individual health benefit plan based upon preexisting conditions of the individual except as provided in RCW 48.43.018.

(2) No carrier may deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions except as provided in this section.

(3) For an individual health benefit plan originally issued on or after March 23, 2000, preexisting condition waiting periods imposed upon a person enrolling in an individual health benefit plan shall be no more than nine months for a preexisting condition for which medical advice was given, for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months prior to the effective date of the plan. No carrier may impose a preexisting condition waiting period on an individual health benefit plan issued to an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(4) Individual health benefit plan preexisting condition waiting periods shall not apply to prenatal care services.

(5) No carrier may avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. A new or changed rate classification will be deemed an attempt to avoid the provisions of this section if the new or changed classification would substantially discourage applications for coverage from individuals who are higher than average health risks. These provisions apply only to individuals who are Washington residents.

(6) For any person under age nineteen applying for coverage as allowed by RCW 48.43.0122(1) or enrolled in a health benefit plan subject to sections 1201 and 10103 of the patient protection and affordable care act (P.L. 111-148) that is not a grandfathered health plan in the individual market, a carrier must not impose a preexisting condition exclusion or waiting period or other limitations on benefits or enrollment due to a preexisting condition. [2011 c 315 § 3; 2001 c 196 § 6; 2000 c 79 § 19.]

Intent—2011 c 315: See note following RCW 48.43.005.

Effective date—2001 c 196: See note following RCW 48.20.025.

Additional notes found at www.leg.wa.gov

48.43.0121 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.43.0122 Individual health benefit plans—Persons under age nineteen. (1) The commissioner shall adopt rules establishing and implementing requirements for the open

enrollment periods and special enrollment periods that carriers must follow for individual health benefit plans and enrollment of persons under age nineteen.

(2) The commissioner shall monitor the sale of individual health benefit plans and if a carrier refuses to sell guaranteed issue policies to persons under age nineteen in compliance with rules adopted by the commissioner pursuant to subsection (1) of this section, the commissioner may levy fines or suspend or revoke a certificate of authority as provided in chapter 48.05 RCW. [2011 c 315 § 4.]

Intent—2011 c 315: See note following RCW 48.43.005.

48.43.081 Anatomic pathology services—Payment for services—Definitions. (1) A clinical laboratory or physician, located in this state, or in another state, providing anatomic pathology services for patients in this state, shall present or cause to be presented a claim, bill, or demand for payment for these services only to the following:

- (a) The patient;
- (b) The responsible insurer or other third-party payer;
- (c) The hospital, public health clinic, or nonprofit health clinic ordering such services;
- (d) The referring laboratory, excluding a laboratory of a physician's office or group practice that does not perform the professional component of the anatomic pathology service for which such claim, bill, or demand is presented; or
- (e) Governmental agencies or their specified public or private agent, agency, or organization on behalf of the recipient of the services.

(2) Except for a physician at a referring laboratory that has been billed pursuant to subsection (6) of this section, no licensed practitioner in the state may, directly or indirectly, charge, bill, or otherwise solicit payment for anatomic pathology services unless such services were rendered personally by the licensed practitioner or under the licensed practitioner's direct supervision in accordance with section 353 of the public health service act (42 U.S.C. Sec. 263a).

(3) No patient, insurer, third-party payer, hospital, public health clinic, or nonprofit health clinic may be required to reimburse any licensed practitioner for charges or claims submitted in violation of this section.

(4) Nothing in this section may be construed to mandate the assignment of benefits for anatomic pathology services as defined in this section.

(5) For purposes of this section, "anatomic pathology services" means:

- (a) Histopathology or surgical pathology, meaning the gross and microscopic examination performed by a physician or under the supervision of a physician, including histologic processing;
- (b) Cytopathology, meaning the microscopic examination of cells from the following: (i) Fluids, (ii) aspirates, (iii) washings, (iv) brushings, or (v) smears, including the pap test examination performed by a physician or under the supervision of a physician;
- (c) Hematology, meaning the microscopic evaluation of bone marrow aspirates and biopsies performed by a physician, or under the supervision of a physician, and peripheral blood smears when the attending or treating physician, or

technologist requests that a blood smear be reviewed by a pathologist;

(d) Subcellular pathology or molecular pathology, meaning the assessment of a patient specimen for the detection, localization, measurement, or analysis of one or more protein or nucleic acid targets; and

(e) Blood-banking services performed by pathologists.

(6) The provisions of this section do not prohibit billing of a referring laboratory for anatomic pathology services in instances where a sample or samples must be sent to another physician or laboratory for consultation or histologic processing, except that for purposes of this subsection the term "referring laboratory" does not include a laboratory of a physician's office or group practice that does not perform the professional component of the anatomic pathology service involved.

(7) The uniform disciplinary act, chapter 18.130 RCW, governs the discipline of any practitioner who violates the provisions of this section. [2011 c 128 § 1.]

48.43.517 Enrollment of child participating in medical assistance program—Employer-sponsored health plan. When the health care authority has determined that it is cost-effective to enroll a child participating in a medical assistance program under chapter 74.09 RCW in an employer-sponsored health plan, the carrier shall permit the enrollment of the participant who is otherwise eligible for coverage in the health plan without regard to any open enrollment restrictions. The request for special enrollment shall be made by the authority or participant within sixty days of the authority's determination that the enrollment would be cost-effective. [2011 1st sp.s. c 15 § 78; 2007 c 5 § 7.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

48.43.530 Requirement for carriers to have a comprehensive grievance process—Carrier's duties—Procedures—Appeals—Rules. (1) Each carrier that offers a health plan must have a fully operational, comprehensive grievance process that complies with the requirements of this section and any rules adopted by the commissioner to implement this section. For the purposes of this section, the commissioner shall consider grievance process standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services, and for health plans that are not grandfathered health plans as approved by the United States department of health and human services or the United States department of labor.

(2) Each carrier must process as a complaint an enrollee's expression of dissatisfaction about customer service or the quality or availability of a health service. Each carrier must implement procedures for registering and responding to oral and written complaints in a timely and thorough manner.

(3) Each carrier must provide written notice to an enrollee or the enrollee's designated representative, and the enrollee's provider, of its decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to or continued stay in a health care facility.

(4) Each carrier must process as an appeal an enrollee's written or oral request that the carrier reconsider: (a) Its resolution of a complaint made by an enrollee; or (b) its decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to, or continued stay in, a health care facility. A carrier must not require that an enrollee file a complaint prior to seeking appeal of a decision under (b) of this subsection.

(5) To process an appeal, each carrier must:

(a) Provide written notice to the enrollee when the appeal is received;

(b) Assist the enrollee with the appeal process;

(c) Make its decision regarding the appeal within thirty days of the date the appeal is received. An appeal must be expedited if the enrollee's provider or the carrier's medical director reasonably determines that following the appeal process response timelines could seriously jeopardize the enrollee's life, health, or ability to regain maximum function. The decision regarding an expedited appeal must be made within seventy-two hours of the date the appeal is received;

(d) Cooperate with a representative authorized in writing by the enrollee;

(e) Consider information submitted by the enrollee;

(f) Investigate and resolve the appeal; and

(g) Provide written notice of its resolution of the appeal to the enrollee and, with the permission of the enrollee, to the enrollee's providers. The written notice must explain the carrier's decision and the supporting coverage or clinical reasons and the enrollee's right to request independent review of the carrier's decision under RCW 48.43.535.

(6) Written notice required by subsection (3) of this section must explain:

(a) The carrier's decision and the supporting coverage or clinical reasons; and

(b) The carrier's appeal process, including information, as appropriate, about how to exercise the enrollee's rights to obtain a second opinion, and how to continue receiving services as provided in this section.

(7) When an enrollee requests that the carrier reconsider its decision to modify, reduce, or terminate an otherwise covered health service that an enrollee is receiving through the health plan and the carrier's decision is based upon a finding that the health service, or level of health service, is no longer medically necessary or appropriate, the carrier must continue to provide that health service until the appeal is resolved. If the resolution of the appeal or any review sought by the enrollee under RCW 48.43.535 affirms the carrier's decision, the enrollee may be responsible for the cost of this continued health service.

(8) Each carrier must provide a clear explanation of the grievance process upon request, upon enrollment to new enrollees, and annually to enrollees and subcontractors.

(9) Each carrier must ensure that the grievance process is accessible to enrollees who are limited English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to file a grievance.

(10) Each carrier must: Track each appeal until final resolution; maintain, and make accessible to the commissioner for a period of three years, a log of all appeals; and identify

and evaluate trends in appeals. [2011 c 314 § 4; 2000 c 5 § 10.]

Additional notes found at www.leg.wa.gov

48.43.535 Independent review of health care disputes—System for using certified independent review organizations—Rules.

(1) There is a need for a process for the fair consideration of disputes relating to decisions by carriers that offer a health plan to deny, modify, reduce, or terminate coverage of or payment for health care services for an enrollee.

(2) An enrollee may seek review by a certified independent review organization of a carrier's decision to deny, modify, reduce, or terminate coverage of or payment for a health care service, after exhausting the carrier's grievance process and receiving a decision that is unfavorable to the enrollee, or after the carrier has exceeded the timelines for grievances provided in RCW 48.43.530, without good cause and without reaching a decision.

(3) The commissioner must establish and use a rotational registry system for the assignment of a certified independent review organization to each dispute. The system should be flexible enough to ensure that an independent review organization has the expertise necessary to review the particular medical condition or service at issue in the dispute, and that any approved independent review organization does not have a conflict of interest that will influence its independence.

(4) Carriers must provide to the appropriate certified independent review organization, not later than the third business day after the date the carrier receives a request for review, a copy of:

(a) Any medical records of the enrollee that are relevant to the review;

(b) Any documents used by the carrier in making the determination to be reviewed by the certified independent review organization;

(c) Any documentation and written information submitted to the carrier in support of the appeal; and

(d) A list of each physician or health care provider who has provided care to the enrollee and who may have medical records relevant to the appeal. Health information or other confidential or proprietary information in the custody of a carrier may be provided to an independent review organization, subject to rules adopted by the commissioner.

(5) Enrollees must be provided with at least five business days to submit to the independent review organization in writing additional information that the independent review organization must consider when conducting the external review. The independent review organization must forward any additional information submitted by an enrollee to the plan or carrier within one business day of receipt by the independent review organization.

(6) The medical reviewers from a certified independent review organization will make determinations regarding the medical necessity or appropriateness of, and the application of health plan coverage provisions to, health care services for an enrollee. The medical reviewers' determinations must be based upon their expert medical judgment, after consideration of relevant medical, scientific, and cost-effectiveness evidence, and medical standards of practice in the state of

Washington. Except as provided in this subsection, the certified independent review organization must ensure that determinations are consistent with the scope of covered benefits as outlined in the medical coverage agreement. Medical reviewers may override the health plan's medical necessity or appropriateness standards if the standards are determined upon review to be unreasonable or inconsistent with sound, evidence-based medical practice.

(7) Once a request for an independent review determination has been made, the independent review organization must proceed to a final determination, unless requested otherwise by both the carrier and the enrollee or the enrollee's representative.

(a) An enrollee or carrier may request an expedited external review if the adverse benefit determination or internal adverse benefit determination concerns an admission, availability of care, continued stay, or health care service for which the claimant received emergency services but has not been discharged from a facility; or involves a medical condition for which the standard external review time frame of forty-five days would seriously jeopardize the life or health of the enrollee or jeopardize the enrollee's ability to regain maximum function. The independent review organization must make its decision to uphold or reverse the adverse benefit determination or final internal adverse benefit determination and notify the enrollee and the carrier or health plan of the determination as expeditiously as possible but within not more than seventy-two hours after the receipt of the request for expedited external review. If the notice is not in writing, the independent review organization must provide written confirmation of the decision within forty-eight hours after the date of the notice of the decision.

(b) For claims involving experimental or investigational treatments, the internal review organization must ensure that adequate clinical and scientific experience and protocols are taken into account as part of the external review process.

(8) Carriers must timely implement the certified independent review organization's determination, and must pay the certified independent review organization's charges.

(9) When an enrollee requests independent review of a dispute under this section, and the dispute involves a carrier's decision to modify, reduce, or terminate an otherwise covered health service that an enrollee is receiving at the time the request for review is submitted and the carrier's decision is based upon a finding that the health service, or level of health service, is no longer medically necessary or appropriate, the carrier must continue to provide the health service if requested by the enrollee until a determination is made under this section. If the determination affirms the carrier's decision, the enrollee may be responsible for the cost of the continued health service.

(10) Each certified independent review organization must maintain written records and make them available upon request to the commissioner.

(11) A certified independent review organization may notify the office of the insurance commissioner if, based upon its review of disputes under this section, it finds a pattern of substandard or egregious conduct by a carrier.

(12)(a) The commissioner shall adopt rules to implement this section after considering relevant standards adopted by

national managed care accreditation organizations and the national association of insurance commissioners.

(b) This section is not intended to supplant any existing authority of the office of the insurance commissioner under this title to oversee and enforce carrier compliance with applicable statutes and rules. [2011 c 314 § 5; 2000 c 5 § 11.]

Additional notes found at www.leg.wa.gov

Chapter 48.44 RCW HEALTH CARE SERVICES

Sections

48.44.017	Schedule of rates for individual contracts—Loss ratio—Definitions. (<i>Effective January 1, 2012.</i>)
48.44.215	Option to cover dependents under age twenty-six.
48.44.323	Prescribed, self-administered anticancer medication.
48.44.380	Conversion contract—Restrictions and requirements—Rules.

48.44.017 Schedule of rates for individual contracts—Loss ratio—Definitions. (*Effective January 1, 2012.*) (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the health care service contractor of health care services, as defined in RCW 48.43.005, provided to a contract holder or paid to or on behalf of a contract holder in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for an enrollee.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Declination rate" for a health care service contractor means the percentage of the total number of applicants for individual health benefit plans received by that health care service contractor in the aggregate in the applicable year which are not accepted for enrollment by that health care service contractor based on the results of the standard health questionnaire administered pursuant to RCW 48.43.018(2)(a).

(d) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(e) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(f) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(g) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) A health care service contractor must file supporting documentation of its method of determining the rates charged for its individual contracts. At a minimum, the health care service contractor must provide the following supporting documentation:

(a) A description of the health care service contractor's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the health care service contractor's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard of seventy-four percent, minus the premium tax rate applicable to the carrier's individual health benefit plans under RCW 48.14.0201. [2011 c 314 § 11; 2008 c 303 § 5; 2001 c 196 § 11; 2000 c 79 § 29.]

Effective date—2011 c 314 §§ 10-12: See note following RCW 48.20.025.

Effective date—2001 c 196: See note following RCW 48.20.025.

Additional notes found at www.leg.wa.gov

48.44.215 Option to cover dependents under age twenty-six. (1) Any individual health care service plan contract that provides coverage for a subscriber's dependent must offer the option of covering any dependent under the age of twenty-six.

(2) Any group health care service plan contract that provides coverage for a participating member's dependent must offer each participating member the option of covering any dependent under the age of twenty-six. [2011 c 314 § 6; 2007 c 259 § 21.]

Effective date—2007 c 259 §§ 18-22: See note following RCW 41.05.095.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.44.323 Prescribed, self-administered anticancer medication. (1) Each health plan issued or renewed on or after January 1, 2012, that provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility as defined in *RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy. [2011 c 159 § 5.]

***Reviser's note:** RCW 48.43.005 was amended by 2011 c 314 § 3 and by 2011 c 315 § 2, changing subsections (15) and (16) to subsections (20) and (21).

Findings—2011 c 159: See note following RCW 41.05.175.

48.44.380 Conversion contract—Restrictions and requirements—Rules. (1) A health care service contractor shall not require proof of insurability as a condition for issuance of the conversion contract.

(2) A conversion contract may not contain an exclusion for preexisting conditions for any applicant who is under age nineteen. For policies issued to those age nineteen and older, an exclusion for a preexisting condition is permitted only to the extent that a waiting period for a preexisting condition has not been satisfied under the group contract.

(3) A health care service contractor must offer at least three contract benefit plans that comply with the following:

(a) A major medical plan with a five thousand dollar deductible per person;

(b) A comprehensive medical plan with a five hundred dollar deductible per person; and

(c) A basic medical plan with a one thousand dollar deductible per person.

(4) The insurance commissioner may revise the deductible amounts in subsection (3) of this section from time to time to reflect changing health care costs.

(5) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion contracts.

(6) The commissioner shall adopt rules to establish specific standards for conversion contract provisions. These rules may include but are not limited to:

(a) Terms of renewability;

(b) Nonduplication of coverage;

(c) Benefit limitations, exceptions, and reductions; and

(d) Definitions of terms. [2011 c 314 § 7; 1984 c 190 §

7.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

Chapter 48.46 RCW

HEALTH MAINTENANCE ORGANIZATIONS

Sections

48.46.062	Schedule of rates for individual agreements—Loss ratio—Definitions. (<i>Effective January 1, 2012.</i>)
48.46.274	Prescribed, self-administered anticancer medication.
48.46.325	Option to cover dependents under age twenty-six.
48.46.460	Conversion agreement—Restrictions and requirements—Rules.

48.46.062 Schedule of rates for individual agreements—Loss ratio—Definitions. (*Effective January 1, 2012.*) (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the health maintenance organization of health care services, as defined in RCW 48.43.005, provided to an enrollee or paid to or on behalf of the enrollee in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for an enrollee.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Declination rate" for a health maintenance organization means the percentage of the total number of applicants for individual health benefit plans received by that health maintenance organization in the aggregate in the applicable

year which are not accepted for enrollment by that health maintenance organization based on the results of the standard health questionnaire administered pursuant to RCW 48.43.018(2)(a).

(d) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(e) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(f) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(g) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) A health maintenance organization must file supporting documentation of its method of determining the rates charged for its individual agreements. At a minimum, the health maintenance organization must provide the following supporting documentation:

(a) A description of the health maintenance organization's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the health maintenance organization's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard of seventy-four percent, minus the premium tax rate applicable to the carrier's individual health benefit plans under RCW 48.14.0201. [2011 c 314 § 12; 2008 c 303 § 6; 2001 c 196 § 12; 2000 c 79 § 32.]

Effective date—2011 c 314 §§ 10-12: See note following RCW 48.20.025.

Effective date—2001 c 196: See note following RCW 48.20.025.

Additional notes found at www.leg.wa.gov

48.46.274 Prescribed, self-administered anticancer medication. (1) Each health plan issued or renewed on or after January 1, 2012, that provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility as defined in *RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy. [2011 c 159 § 6.]

***Reviser's note:** RCW 48.43.005 was amended by 2011 c 314 § 3 and by 2011 c 315 § 2, changing subsections (15) and (16) to subsections (20) and (21).

Findings—2011 c 159: See note following RCW 41.05.175.

48.46.325 Option to cover dependents under age twenty-six. (1) Any individual health maintenance agreement that provides coverage for a subscriber's dependent must offer the option of covering any dependent under the age of twenty-six.

(2) Any group health maintenance agreement that provides coverage for a participating member's dependent must offer each participating member the option of covering any dependent under the age of twenty-six. [2011 c 314 § 8; 2007 c 259 § 22.]

Effective date—2007 c 259 §§ 18-22: See note following RCW 41.05.095.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.46.460 Conversion agreement—Restrictions and requirements—Rules. (1) A health maintenance organization must offer a conversion agreement for comprehensive health care services and shall not require proof of insurability as a condition for issuance of the conversion agreement.

(2) A conversion agreement may not contain an exclusion for preexisting conditions for an applicant who is under age nineteen. For policies issued to those age nineteen and older, an exclusion for a preexisting condition is permitted only to the extent that a waiting period for a preexisting condition has not been satisfied under the group agreement.

(3) A conversion agreement need not provide benefits identical to those provided under the group agreement. The conversion agreement may contain provisions requiring the person covered by the conversion agreement to pay reasonable deductibles and copayments, except for preventive service benefits as defined in 45 C.F.R. 147.130 (2010), implementing sections 2701 through 2763, 2791, and 2792 of the public health service act (42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92), as amended.

(4) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion agreements.

(5) The commissioner shall adopt rules to establish specific standards for conversion agreement provisions. These rules may include but are not limited to:

- (a) Terms of renewability;
- (b) Nonduplication of coverage;
- (c) Benefit limitations, exceptions, and reductions; and
- (d) Definitions of terms. [2011 c 314 § 9; 1984 c 190 § 10.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

Chapter 48.62 RCW

LOCAL GOVERNMENT INSURANCE TRANSACTIONS

Sections

48.62.021 Definitions.

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

(1) "Health and welfare benefits" means a plan or program established by a local government entity or entities for

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the purpose of providing its employees and their dependents, and in the case of school districts, its district employees, students, directors, or any of their dependents, with health care, accident, disability, death, and salary protection benefits.

(2) "Local government entity" or "entity" means every unit of local government, both general purpose and special purpose, and includes, but is not limited to, counties, cities, towns, port districts, public utility districts, water-sewer districts, school districts, fire protection districts, irrigation districts, metropolitan municipal corporations, conservation districts, and other political subdivisions, governmental subdivisions, municipal corporations, and quasi-municipal corporations.

(3) "Nonprofit corporation" or "corporation" has the same meaning as defined in RCW 24.03.005(3).

(4) "Property and liability risks" includes the risk of property damage or loss sustained by a local government entity and the risk of claims arising from the tortious or negligent conduct or any error or omission of the local government entity, its officers, employees, agents, or volunteers as a result of which a claim may be made against the local government entity.

(5) "Risk assumption" means a decision to absorb the entity's financial exposure to a risk of loss without the creation of a formal program of advance funding of anticipated losses.

(6) "Self-insurance" means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

(7) "State risk manager" means the risk manager of the office of risk management within the department of enterprise services. [2011 1st sp.s. c 43 § 520; 2004 c 255 § 2; 2002 c 332 § 24; 1999 c 153 § 60; 1991 sp.s. c 30 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Intent—2004 c 255: See note following RCW 48.62.036.

Intent—Effective date—2002 c 332: See notes following RCW 43.19.760.

Additional notes found at www.leg.wa.gov

Chapter 48.64 RCW

AFFORDABLE HOUSING ENTITIES— JOINT SELF-INSURANCE PROGRAMS

Sections

48.64.010 Definitions.

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

(1) "Affordable housing" means housing projects in which some of the dwelling units may be purchased or rented on a basis that is affordable to households with an income of eighty percent or less of the county median family income, adjusted for family size.

(2) "Affordable housing entity" means any of the following:

(a) A housing authority created under the laws of this state or another state and any agency or instrumentality of a housing authority including, but not limited to, a legal entity created to conduct a joint self-insurance program for housing authorities that is operating in accordance with chapter 48.62 RCW;

(b) A nonprofit corporation, whether organized under the laws of this state or another state, that is engaged in providing affordable housing and is necessary for the completion, management, or operation of a project because of its access to funding sources that are not available to a housing authority, as described in this section; or

(c) A general or limited partnership or limited liability company, whether organized under the laws of this state or another state, that is engaged in providing affordable housing as defined in this section. A partnership or limited liability company may only be considered an affordable housing entity if a housing authority or nonprofit corporation, as described in this subsection, satisfies any of the following conditions: (i) It has, or has the right to acquire, a financial or ownership interest in the partnership or limited liability company; (ii) it possesses the power to direct management or policies of the partnership or limited liability company; or (iii) it has entered into a contract to lease, manage, or operate the affordable housing owned by the partnership or limited liability company.

(3) "Property and liability risks" includes the risk of property damage or loss sustained by an affordable housing entity and the risk of claims arising from the tortious or negligent conduct or any error or omission of the entity, its officers, employees, agents, or volunteers as a result of which a claim may be made against the entity.

(4) "Self-insurance" means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

(5) "State risk manager" means the risk manager of the office of risk management within the department of enterprise services. [2011 1st sp.s. c 43 § 521; 2009 c 314 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Chapter 48.85 RCW

WASHINGTON LONG-TERM CARE PARTNERSHIP

Sections

48.85.030 Insurance policy criteria—Rules.

48.85.030 Insurance policy criteria—Rules. (1) The insurance commissioner shall adopt rules defining the criteria that qualified long-term care partnership insurance policies must meet to satisfy the requirements of this chapter. The rules shall incorporate any requirements set forth by chapter 48.83 RCW and the deficit reduction act of 2005 for qualified long-term care partnership insurance policies purchased for the purposes of this chapter.

(2) Insurers offering long-term care policies for the purposes of this chapter shall demonstrate to the satisfaction of the insurance commissioner that they:

(a) Have procedures to provide notice to each purchaser of the long-term care consumer education program;

(b) Have procedures that provide for the keeping of individual policy records and procedures for the explanation of coverage and benefits identifying those payments or services available under the policy that meet the purposes of this chapter;

(c) Agree to provide the insurance commissioner any required annual report containing information derived from the long-term care partnership long-term care insurance uniform data set as specified by the office of the insurance commissioner. [2011 c 47 § 12; 1995 1st sp.s. c 18 § 78; 1993 c 492 § 460.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050. Additional notes found at www.leg.wa.gov

Chapter 48.94 RCW

REINSURANCE INTERMEDIARY ACT

Sections

48.94.010 Acting as a reinsurance intermediary-broker or reinsurance intermediary-manager—Commissioner's powers—Licenses—Attorney exemption.

48.94.010 Acting as a reinsurance intermediary-broker or reinsurance intermediary-manager—Commissioner's powers—Licenses—Attorney exemption. (1) No person, firm, association, or corporation may act as a reinsurance intermediary-broker in this state if the person, firm, association, or corporation maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation:

(a) In this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-broker in this state; or

(b) In another state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-broker in this state or another state having a regulatory scheme substantially similar to this chapter.

(2) No person, firm, association, or corporation may act as a reinsurance intermediary-manager:

(a) For a reinsurer domiciled in this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state;

(b) In this state, if the person, firm, association, or corporation maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation in this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state;

(c) In another state for a nondomestic reinsurer, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state or another state having a substantially similar regulatory scheme.

(3) The commissioner may require a reinsurance intermediary-manager subject to subsection (2) of this section to:

(a) File a bond in an amount and from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) Maintain an errors and omissions policy in an amount acceptable to the commissioner.

(4) The commissioner may issue a reinsurance intermediary license to a person, firm, association, or corporation who has complied with the requirements of this chapter. Any such license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons may be named in the application and any supplements to it. Any such license issued to a corporation authorizes all of the officers, and any designated employees and directors of it, to act as reinsurance intermediaries on behalf of the corporation, and all such persons must be named in the application and any supplements to it.

(5)(a) Each licensed nonresident reinsurance intermediary must appoint the commissioner as the reinsurance intermediary's attorney to receive service of legal process issued against the reinsurance intermediary in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service upon the reinsurance intermediary.

(b) With the appointment the reinsurance intermediary must designate the person to whom the commissioner must forward legal process so served upon him or her.

(c) The appointment is irrevocable, binds any successor in interest or to the assets or liabilities of the reinsurance intermediary, and remains in effect for as long as there could be any cause of action against the reinsurance intermediary arising out of the reinsurance intermediary's insurance transactions in this state.

(d) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

(6) The commissioner may refuse to issue a reinsurance intermediary license if, in his or her judgment, the applicant, anyone named on the application, or a member, principal, officer, or director of the applicant, is not trustworthy, or that a controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of the license, or has failed to comply with a prerequisite for the issuance of such license. Upon written request, the commissioner will furnish a summary of the basis for refusal to issue a license, which document is privileged and not subject to chapter 42.56 RCW.

(7) Licensed attorneys-at-law of this state when acting in their professional capacity as such are exempt from this section. [2011 c 47 § 13; 2005 c 274 § 317; 1993 c 462 § 24.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Chapter 48.102 RCW

LIFE SETTLEMENTS ACT

Sections

- 48.102.011 Licensing requirements for providers.
48.102.021 Licensing requirements for brokers.

48.102.011 Licensing requirements for providers. (1)

A person, wherever located, may not act as a provider with an owner who is a resident of this state or if there is more than one owner on a single policy and one of the owners is a resident of this state, without first having obtained a license from the commissioner.

(2) An application for a provider license must be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application must be accompanied by a licensing fee in the amount of two hundred fifty dollars for deposit into the general fund.

(3) All provider licenses continue in force until suspended, revoked, or not renewed. A license is subject to renewal annually on the first day of July upon application of the provider and payment of a renewal fee of two hundred fifty dollars for deposit into the general fund. If not so renewed, the license automatically expires on the renewal date.

(a) If the renewal fee is not received by the commissioner prior to the expiration date, the provider must pay to the commissioner in addition to the renewal fee, a surcharge as follows:

(i) For the first thirty days or part thereof delinquency the surcharge is fifty percent of the renewal fee;

(ii) For the next thirty days or part thereof delinquency the surcharge is one hundred percent of the renewal fee;

(b) If the renewal fee is not received by the commissioner after sixty days but prior to twelve months after the expiration date the payment of the renewal fee is for reinstatement of the license and the provider must pay to the commissioner the renewal fee and a surcharge of two hundred percent.

(4) Subsection (3)(a) and (b) of this section does not exempt any person from any penalty provided by law for transacting a life settlement business without a valid and subsisting license.

(5) The applicant must provide information as the commissioner may require on forms prescribed by the commissioner. The commissioner has the authority, at any time, to require an applicant to fully disclose the identity of its stockholders, partners, officers, and employees, and the commissioner may, in the exercise of the commissioner's sole discretion, refuse to issue a license in the name of any person if not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this chapter.

(6) A license issued to a partnership, corporation, or other entity authorizes all members, officers, and designated employees to act as a licensee under the license, if those persons are named in the application and any supplements to the application.

(7) Upon the filing of an application for a provider's license and the payment of the license fee, the commissioner must make an investigation of each applicant and may issue a license if the commissioner finds that the applicant:

(a) Has provided a detailed plan of operation;

(b) Is competent and trustworthy and intends to transact its business in good faith;

(c) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied;

(d)(i) Has demonstrated evidence of financial responsibility in a form and in an amount prescribed by the commissioner by rule.

(ii) The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary;

(e) If the applicant is a legal entity, is formed or organized under the laws of this state, is a foreign legal entity authorized to transact business in this state, or provides a certificate of good standing from the state of its domicile; and

(f) Has provided to the commissioner an antifraud plan that meets the requirements of RCW 48.102.140 and includes:

(i) A description of the procedures for detecting and investigating possible fraudulent acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(ii) A description of the procedures for reporting fraudulent insurance acts to the commissioner;

(iii) A description of the plan for antifraud education and training of its underwriters and other personnel; and

(iv) A written description or chart outlining the arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(8)(a) A nonresident provider must appoint the commissioner as its attorney to receive service of, and upon whom must be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes service upon the provider. Service of legal process against the provider can be had only by service upon the commissioner.

(b) With the appointment the provider must designate the person to whom the commissioner must forward legal process so served upon him or her. The provider may change the person by filing a new designation.

(c) The appointment of the commissioner as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the provider, and remains in effect as long as there is in this state any contract made by the provider or liabilities or duties arising therefrom.

(d) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

(9) A provider may not use any person to perform the functions of a broker unless the person is authorized to act as a broker under this chapter.

(10) A provider must provide to the commissioner new or revised information about officers, stockholders, partners, directors, members, or designated employees within thirty days of the change. [2011 c 47 § 14; 2010 c 27 § 5; 2009 c 104 § 3.]

48.102.021 Licensing requirements for brokers. (1)

Only a life insurance producer who has been duly licensed as a resident insurance producer with a lifeline of authority in this state or his or her home state for at least one year and is licensed as a nonresident producer in this state is permitted to operate as a broker.

(2) Not later than thirty days from the first day of operating as a broker, the life insurance producer must notify the commissioner that he or she intends acting as a broker on a form prescribed by the commissioner, pay a fee of one hundred dollars, and if a nonresident producer appoint the commissioner as attorney for service of process under RCW 48.02.200. Notification must include an acknowledgement

by the life insurance producer that he or she will operate as a broker in accordance with this chapter.

(3) A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner, whose compensation is not paid directly or indirectly by the provider or purchaser, may negotiate life settlement contracts on behalf of the owner without having to obtain a license as a broker.

(4) The authority to act as a broker continues in force until suspended, revoked, or not renewed. The authority to act as a broker automatically expires if not timely renewed. The authority to act as a broker is valid for a time period coincident with the expiration date of the broker's insurance producer license. The authority to act as a broker is renewable at that time, upon payment of a renewal fee in the amount of one hundred dollars and if the payment is received by the commissioner prior to the expiration date, the broker's authority to act as a broker continues in effect.

(a) If the renewal fee is not received by the commissioner prior to the expiration date, the broker must pay to the commissioner in addition to the renewal fee, a surcharge as follows:

(i) For the first thirty days or part thereof of delinquency the surcharge is fifty percent of the renewal fee;

(ii) For the next thirty days or part thereof delinquency the surcharge is one hundred percent of the renewal fee;

(b) If the payment of the renewal fee is not received by the commissioner after sixty days the surcharge is two hundred percent of the renewal fee.

(5) Subsection (4)(a) of this section does not exempt any person from any penalty provided by law for transacting life settlement business without the valid authority to act as a broker.

(6)(a) A nonresident broker must appoint the commissioner as its attorney to receive service of, and upon whom must be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes service upon the broker. Service of legal process against the broker can be had only by service upon the commissioner.

(b) The appointment of the commissioner as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the broker, and remains in effect as long as there is in this state any contract made by the broker or liabilities or duties arising therefrom.

(c) The service of process must be accomplished and processed in the manner prescribed in RCW 48.02.200.

(7) A broker may not use any person to perform the functions of a provider unless such a person holds a current, valid license as a provider, and as provided in this chapter. [2011 c 47 § 15; 2009 c 104 § 4.]

Chapter 48.110 RCW

SERVICE CONTRACTS AND PROTECTION PRODUCT GUARANTEES

Sections

48.110.020 Definitions.

48.110.030 Registration required—Application—Required information—Grounds for refusal—Annual renewal.

48.110.055 Protection product guarantee providers—Obligations—Application—Required information—Grounds for refusal—Annual renewal.

48.110.020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Administrator" means the person who is responsible for the administration of the service contracts, the service contracts plan, or the protection product guarantees.

(2) "Commissioner" means the insurance commissioner of this state.

(3) "Consumer" means an individual who buys any tangible personal property that is primarily for personal, family, or household use.

(4) "Home heating fuel service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of a home heating fuel supply system including the fuel tank and all visible pipes, caps, lines, and associated parts or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear.

(5) "Incidental costs" means expenses specified in the guarantee incurred by the protection product guarantee holder related to damages to other property caused by the failure of the protection product to perform as provided in the guarantee. "Incidental costs" may include, without limitation, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Incidental costs may be paid under the provisions of the protection product guarantee in either a fixed amount specified in the protection product guarantee or sales agreement, or by the use of a formula itemizing specific incidental costs incurred by the protection product guarantee holder to be paid.

(6) "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.

(7) "Motor vehicle" means any vehicle subject to registration under chapter 46.16A RCW.

(8) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.

(9) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.

(10) "Protection product" means any product offered or sold with a guarantee to repair or replace another product or pay incidental costs upon the failure of the product to perform pursuant to the terms of the protection product guarantee.

(11) "Protection product guarantee" means a written agreement by a protection product guarantee provider to repair or replace another product or pay incidental costs upon the failure of the protection product to perform pursuant to the terms of the protection product guarantee.

(12) "Protection product guarantee holder" means a person who is the purchaser or permitted transferee of a protection product guarantee.

(13) "Protection product guarantee provider" means a person who is contractually obligated to the protection prod-

uct guarantee holder under the terms of the protection product guarantee. Protection product guarantee provider does not include an authorized insurer providing a reimbursement insurance policy.

(14) "Protection product seller" means the person who sells the protection product to the consumer.

(15) "Provider fee" means the consideration paid by a consumer for a service contract.

(16) "Reimbursement insurance policy" means a policy of insurance that is issued to a service contract provider or a protection product guarantee provider to provide reimbursement to the service contract provider or the protection product guarantee provider or to pay on behalf of the service contract provider or the protection product guarantee provider all contractual obligations incurred by the service contract provider or the protection product guarantee provider under the terms of the insured service contracts or protection product guarantees issued or sold by the service contract provider or the protection product guarantee provider.

(17)(a) "Service contract" means a contract or agreement for consideration over and above the lease or purchase price of the property for a specific duration to perform the repair, replacement, or maintenance of property or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling, with or without additional provision for incidental payment of indemnity under limited circumstances, including towing, rental, emergency road services, or other expenses relating to the failure of the product or of a component part thereof.

(b) "Service contract" also includes a contract or agreement sold for separately stated consideration for a specific duration to perform the repair or replacement of tires and/or wheels damaged as a result of coming into contact with road hazards including but not limited to potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps. However, a contract or agreement meeting the definition under this subsection (17)(b) in which the party obligated to perform is either a tire or wheel manufacturer or a motor vehicle manufacturer is exempt from the requirements of this chapter.

(18) "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a service contract.

(19) "Service contract provider" means a person who is contractually obligated to the service contract holder under the terms of the service contract.

(20) "Service contract seller" means the person who sells the service contract to the consumer.

(21) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration; that is not negotiated or separated from the sale of the product and is incidental to the sale of the product; and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services. [2011 c 171 § 104. Prior: 2010 c 89 § 1; prior:

2006 c 274 § 3; 2006 c 36 § 17; 2000 c 208 § 2; 1999 c 112 § 3.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Severability—2006 c 36: See RCW 48.111.901.

48.110.030 Registration required—Application—Required information—Grounds for refusal—Annual renewal. (1) A person may not act as, or offer to act as, or hold himself or herself out to be a service contract provider in this state, nor may a service contract be sold to a consumer in this state, unless the service contract provider has a valid registration as a service contract provider issued by the commissioner.

(2) Applicants to be a service contract provider must make an application to the commissioner upon a form to be furnished by the commissioner. The application must include or be accompanied by the following information and documents:

(a) All basic organizational documents of the service contract provider, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, bylaws, and other applicable documents, and all amendments to those documents;

(b) The identities of the service contract provider's executive officer or officers directly responsible for the service contract provider's service contract business, and, if more than fifty percent of the service contract provider's gross revenue is derived from the sale of service contracts, the identities of the service contract provider's directors and stockholders having beneficial ownership of ten percent or more of any class of securities;

(c) Audited annual financial statements or other financial reports acceptable to the commissioner for the two most recent years which prove that the applicant is solvent and any information the commissioner may require in order to review the current financial condition of the applicant. If the service contract provider is relying on RCW 48.110.050(2)(c) to assure the faithful performance of its obligations to service contract holders, then the audited financial statements of the service contract provider's parent company must also be filed;

(d) An application fee of two hundred fifty dollars, which must be deposited into the general fund; and

(e) Any other pertinent information required by the commissioner.

(3) Each registered service contract provider must appoint the commissioner as the service contract provider's attorney to receive service of legal process issued against the service contract provider in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service upon the service contract provider.

(a) With the appointment the service contract provider must designate the person to whom the commissioner must forward legal process so served upon him or her.

(b) The appointment is irrevocable, binds any successor in interest or to the assets or liabilities of the service contract provider, and remains in effect for as long as there could be any cause of action against the service contract provider arising

out of any of the service contract provider's contracts or obligations in this state.

(c) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

(4) The commissioner may refuse to issue a registration if the commissioner determines that the service contract provider, or any individual responsible for the conduct of the affairs of the service contract provider under subsection (2)(b) of this section, is not competent, trustworthy, financially responsible, or has had a license as a service contract provider or similar license denied or revoked for cause by any state.

(5) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed for so long as the service contract provider continues in business in this state and remains in compliance with this chapter. A registration is subject to renewal annually on the first day of July upon application of the service contract provider and payment of a fee of two hundred dollars, which must be deposited into the general fund. If not so renewed, the registration expires on the June 30th next preceding.

(6) A service contract provider must keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs. [2011 c 47 § 16; 2006 c 274 § 4; 2005 c 223 § 33; 1999 c 112 § 4.]

48.110.055 Protection product guarantee providers—Obligations—Application—Required information—Grounds for refusal—Annual renewal. (1) This section applies to protection product guarantee providers.

(2) A person must not act as, or offer to act as, or hold himself or herself out to be a protection product guarantee provider in this state, nor may a protection product be sold to a consumer in this state, unless the protection product guarantee provider has:

(a) A valid registration as a protection product guarantee provider issued by the commissioner; and

(b) Either demonstrated its financial responsibility or assured the faithful performance of the protection product guarantee provider's obligations to its protection product guarantee holders by insuring all protection product guarantees under a reimbursement insurance policy issued by an insurer holding a certificate of authority from the commissioner or a risk retention group, as defined in 15 U.S.C. Sec. 3901(a)(4), as long as that risk retention group is in full compliance with the federal liability risk retention act of 1986 (15 U.S.C. Sec. 3901 et seq.), is in good standing in its domiciliary jurisdiction, and properly registered with the commissioner under chapter 48.92 RCW. The insurance required by this subsection must meet the following requirements:

(i) The insurer or risk retention group must, at the time the policy is filed with the commissioner, and continuously thereafter, maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file audited financial statements with the commissioner; and

(ii) The commissioner may authorize an insurer or risk retention group that has surplus as to policyholders and paid-in capital of less than fifteen million dollars, but at least equal

to ten million dollars, to issue the insurance required by this subsection if the insurer or risk retention group demonstrates to the satisfaction of the commissioner that the company maintains a ratio of direct written premiums, wherever written, to surplus as to policyholders and paid-in capital of not more than three to one.

(3) Applicants to be a protection product guarantee provider must make an application to the commissioner upon a form to be furnished by the commissioner. The application must include or be accompanied by the following information and documents:

(a) The names of the protection product guarantee provider's executive officer or officers directly responsible for the protection product guarantee provider's protection product guarantee business and their biographical affidavits on a form prescribed by the commissioner;

(b) The name, address, and telephone number of any administrators designated by the protection product guarantee provider to be responsible for the administration of protection product guarantees in this state;

(c) A copy of the protection product guarantee reimbursement insurance policy or policies;

(d) A copy of each protection product guarantee the protection product guarantee provider proposes to use in this state;

(e) Any other pertinent information required by the commissioner; and

(f) A nonrefundable application fee of two hundred fifty dollars.

(4) Each registered protection product guarantee provider must appoint the commissioner as the protection product guarantee provider's attorney to receive service of legal process issued against the protection product guarantee provider in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service upon the protection product guarantee provider.

(a) With the appointment the protection product guarantee provider must designate the person to whom the commissioner must forward legal process so served upon him or her.

(b) The appointment is irrevocable, binds any successor in interest or to the assets or liabilities of the protection product guarantee provider, and remains in effect for as long as there could be any cause of action against the protection product guarantee provider arising out of any of the protection product guarantee provider's contracts or obligations in this state.

(c) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

(5) The commissioner may refuse to issue a registration if the commissioner determines that the protection product guarantee provider, or any individual responsible for the conduct of the affairs of the protection product guarantee provider under subsection (3)(a) of this section, is not competent, trustworthy, financially responsible, or has had a license as a protection product guarantee provider or similar license denied or revoked for cause by any state.

(6) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed for so long as the protection product guarantee provider continues in business in this state and

remains in compliance with this chapter. A registration is subject to renewal annually on the first day of July upon application of the protection product guarantee provider and payment of a fee of two hundred fifty dollars. If not so renewed, the registration expires on the June 30th next preceding.

(7) A protection product guarantee provider must keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs. [2011 c 47 § 17; 2006 c 274 § 17.]

Chapter 48.155 RCW

HEALTH CARE DISCOUNT PLAN ORGANIZATION ACT

Sections

48.155.020 License required—Application—Review—Annual renewal—Required disclosures.

48.155.020 License required—Application—Review—Annual renewal—Required disclosures. (1) Before conducting discount plan business to which this chapter applies, a person must obtain a license from the commissioner to operate as a discount plan organization.

(2) Except as provided in subsection (4) of this section, each application for a license to operate as a discount plan organization:

(a) Must be in a form prescribed by the commissioner and verified by an officer or authorized representative of the applicant; and

(b) Must demonstrate, set forth, or be accompanied by the following:

(i) The two hundred fifty dollar application fee, which must be deposited into the general fund;

(ii) A copy of the organization documents of the applicant, such as the articles of incorporation, including all amendments;

(iii) A copy of the applicant's bylaws or other enabling documents that establish organizational structure;

(iv) The applicant's federal identification number, business address, and mailing address;

(v)(A) A list of names, addresses, official positions, and biographical information of the individuals who are responsible for conducting the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the officers, contracted management company personnel, and any person or entity owning or having the right to acquire ten percent or more of the voting securities of the applicant; and

(B) A disclosure in the listing of the extent and nature of any contracts or arrangements between any individual who is responsible for conducting the applicant's affairs and the discount plan organization, including all possible conflicts of interest;

(vi) A complete biographical statement, on forms prescribed by the commissioner, with respect to each individual identified under (b)(v) of this subsection;

(vii) A statement generally describing the applicant, its facilities and personnel, and the health care services for

which a discount will be made available under the discount plan;

(viii) A copy of the form of all contracts made or to be made between the applicant and any health care providers or health care provider networks regarding the provision of health care services to members and discounts to be made available to members;

(ix) A copy of the form of any contract made or arrangement to be made between the applicant and any individual listed in (b)(v) of this subsection;

(x) A list identifying by name, address, telephone number, and e-mail address all persons who will market each discount plan offered by the applicant. If the person who will market a discount plan is an entity, only the entity must be identified. This list must be maintained and updated within sixty days of any change in the information. An updated list must be sent to the commissioner as part of the discount plan organization's renewal application under (b)(vii) of this subsection;

(xi) A copy of the form of any contract made or to be made between the applicant and any person, corporation, partnership, or other entity for the performance on the applicant's behalf of any function, including marketing, administration, enrollment, and subcontracting for the provision of health care services to members and discounts to be made available to members;

(xii) A copy of the applicant's most recent financial statements audited by an independent certified public accountant, except that, subject to the approval of the commissioner, an applicant that is an affiliate of a parent entity that is publicly traded and that prepares audited financial statements reflecting the consolidated operations of the parent entity may submit the audited financial statement of the parent entity and a written guaranty that the minimum capital requirements required under RCW 48.155.030 will be met by the parent entity instead of the audited financial statement of the applicant;

(xiii) A description of the proposed methods of marketing including, but not limited to, describing the use of marketers, use of the internet, sales by telephone, electronic mail, or facsimile machine, and use of salespersons to market the discount plan benefits;

(xiv) A description of the member complaint procedures which must be established and maintained by the applicant;

(xv) If domiciled in this state, the name and address of the applicant's Washington statutory agent for service of process, notice, or demand; and

(xvi) Any other information the commissioner may reasonably require.

(3)(a) If the applicant is not domiciled in this state, the applicant must appoint the commissioner as the discount plan organization's attorney to receive service of legal process issued against the discount plan organization in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service upon the discount plan organization.

(b) With the appointment the discount plan organization must designate by name, e-mail address, and address the person to whom the commissioner must forward legal process so served upon him or her. The discount plan organization may change the person by filing a new designation.

(c) The discount plan organization must keep the designation, address, and e-mail address filed with the commissioner current.

(d) The appointment is irrevocable, binds any successor in interest or to the assets or liabilities of the discount plan organization, and remains in effect for as long as there could be any cause of action against the discount plan organization arising out of the discount plan organization's transactions in this state.

(e) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

(4)(a) Upon application to and approval by the commissioner and payment of the applicable fees, a discount plan organization that holds a current license or other form of authority from another state to operate as a discount plan organization, at the commissioner's discretion, may not be required to submit the information required under subsection (2) of this section in order to obtain a license under this section if the commissioner is satisfied that the other state's requirements, at a minimum, are equivalent to those required under subsection (2) of this section or the commissioner is satisfied that the other state's requirements are sufficient to protect the interests of the residents of this state.

(b) Whenever the discount plan organization loses its license or other form of authority in that other state to operate as a discount plan organization, or is the subject of any disciplinary administrative proceeding related to the organization's operating as a discount plan organization in that other state, the discount plan organization must immediately notify the commissioner.

(5) After the receipt of an application filed under subsection (2) or (4) of this section, the commissioner must review the application and notify the applicant of any deficiencies in the application.

(6)(a) Within ninety days after the date of receipt of a completed application, the commissioner must:

(i) Issue a license if the commissioner is satisfied that the applicant has met the following:

(A) The applicant has fulfilled the requirements of this section and the minimum capital requirements in accordance with RCW 48.155.030; and

(B) The persons who own, control, and manage the applicant are competent and trustworthy and possess managerial experience that would make the proposed operation of the discount plan organization beneficial to discount plan members; or

(ii) Disapprove the application and state the grounds for disapproval.

(b) In making a determination under (a) of this subsection, the commissioner may consider, for example, whether the applicant or an officer or manager of the applicant: (i) Is not financially responsible; (ii) does not have adequate expertise or experience to operate a medical discount plan organization; or (iii) is not of good character. Among the factors that the commissioner may consider in making the determination is whether the applicant or an affiliate or a business formerly owned or managed by the applicant or an officer or manager of the applicant has had a previous application for a license, or other authority, to operate as any entity regulated by the commissioner denied, revoked, suspended, or terminated for cause, or is under investigation for or has been

found in violation of a statute or regulation in another jurisdiction within the previous five years.

(7) Prior to licensure by the commissioner, each discount plan organization must establish an internet web site in order to conform to the requirements of RCW 48.155.070(2).

(8)(a) A license is effective for up to one year, unless prior to its expiration the license is renewed in accordance with this subsection or suspended or revoked in accordance with subsection (9) of this section. Licenses issued or renewed on or after July 1, 2010, will be subject to renewal annually on July 1st. If not so renewed, the license will automatically expire on the renewal date.

(b) At least ninety days before a license expires, the discount plan organization must submit:

(i) A renewal application form; and

(ii) A two hundred dollar renewal application fee for deposit into the general fund.

(c) The commissioner must renew the license of each holder that meets the requirements of this chapter and pays the appropriate renewal fee required.

(9)(a) The commissioner may suspend the authority of a discount plan organization to enroll new members or refuse to renew or revoke a discount plan organization's license if the commissioner finds that any of the following conditions exist:

(i) The discount plan organization is not operating in compliance with this chapter;

(ii) The discount plan organization does not have the minimum net worth as required under RCW 48.155.030;

(iii) The discount plan organization has advertised, merchandised, or attempted to merchandise its services in such a manner as to misrepresent its services or capacity for service or has engaged in deceptive, misleading, or unfair practices with respect to advertising or merchandising;

(iv) The discount plan organization is not fulfilling its obligations as a discount plan organization; or

(v) The continued operation of the discount plan organization would be hazardous to its members.

(b) If the commissioner has cause to believe that grounds for the nonrenewal, suspension, or revocation of a license exists, the commissioner must notify the discount plan organization in writing specifically stating the grounds for the refusal to renew or suspension or revocation and may also pursue a hearing on the matter under chapter 48.04 RCW.

(c) When the license of a discount plan organization is nonrenewed, surrendered, or revoked, the discount plan organization must immediately upon the effective date of the order of revocation or, in the case of a nonrenewal, the date of expiration of the license, stop any further advertising, solicitation, collecting of fees, or renewal of contracts, and proceed to wind up its affairs transacted under the license.

(d)(i) When the commissioner suspends a discount plan organization's authority to enroll new members, the suspension order must specify the period during which the suspension is to be in effect and the conditions, if any, that must be met by the discount plan organization prior to reinstatement of its license to enroll members.

(ii) The commissioner may rescind or modify the order of suspension prior to the expiration of the suspension period.

(iii) The license of a discount plan organization may not be reinstated unless requested by the discount plan organiza-

tion. The commissioner may not grant the request for reinstatement if the commissioner finds that the circumstances for which the suspension occurred still exist or are likely to recur.

(10) Each licensed discount plan organization must notify the commissioner immediately whenever the discount plan organization's license, or other form of authority to operate as a discount plan organization in another state, is suspended, revoked, or nonrenewed in that state.

(11) A health care provider who provides discounts to his or her own patients without any cost or fee of any kind to the patient is not required to obtain and maintain a license under this chapter as a discount plan organization. [2011 c 47 § 18; 2010 c 27 § 6; 2009 c 175 § 5.]

Title 49

LABOR REGULATIONS

Chapters

49.04 Apprenticeship.

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Chapter 49.04 RCW

APPRENTICESHIP

Sections

49.04.010 Regulatory apprenticeship council created—Composition—Terms—Compensation—Duties.

49.04.030 Supervisor of apprenticeship—Duties.

49.04.040 Apprenticeship committees—Composition—Duties.

49.04.050 Apprenticeship program standards.

49.04.060 Apprenticeship agreements.

49.04.065 Decisions of apprenticeship council—Appeal to director of labor and industries—Judicial appeal.

49.04.010 Regulatory apprenticeship council created—Composition—Terms—Compensation—Duties.

(1) The department of labor and industries is the agency with responsibility and accountability for apprenticeship within the state for federal purposes. The director of labor and industries shall appoint a regulatory apprenticeship council, composed of three representatives each from employer and employee organizations, respectively. The terms of office of the members of the apprenticeship council first appointed by the director of labor and industries shall be as follows: One representative each of employers and employees shall be appointed for one year, two years, and three years, respectively. Thereafter, each member shall be appointed for a term of three years. The director of labor and industries shall also appoint a public member to the apprenticeship council for a three-year term. Each member shall hold office until a suc-

cessor is appointed and has qualified and any vacancy shall be filled by appointment for the unexpired portion of the term. A designated representative from each of the following: The workforce training and education coordinating board, state board for community and technical colleges, employment security department, and United States department of labor, apprenticeship, training, employer, and labor services, shall be ex officio members of the apprenticeship council. Ex officio members shall have no vote. Each member of the council, not otherwise compensated by public moneys, shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and shall be compensated in accordance with RCW 43.03.240.

(2) The apprenticeship council is authorized to approve apprenticeship programs, and establish apprenticeship program standards as rules, including requirements for apprentice-related and supplemental instruction, coordination of instruction with job experiences, and instructor qualifications. The council shall consider recommendations from the state board for community and technical colleges on matters of apprentice-related and supplemental instruction, coordination of instruction with job experiences, and instructor qualifications. The rules for apprenticeship instructor qualifications shall either be by reference or reasonably similar to the applicable requirements established by or pursuant to chapter 28B.50 RCW. The director is authorized to adopt rules as may be necessary to carry out the intent and purposes of this chapter, after consultation with the council and receiving the council's recommendations, including a procedure to resolve an impasse should a tie vote of the council occur, and perform such other duties as are hereinafter imposed.

(3) Not less than once a year the apprenticeship council shall make a report to the director of labor and industries of its activities and findings which shall be available to the public. [2011 1st sp.s. c 21 § 22; 2011 c 308 § 1; 2001 c 204 § 1; 1984 c 287 § 97; 1982 1st ex.s. c 39 § 2; 1979 ex.s. c 37 § 1; 1977 c 75 § 72; 1975-'76 2nd ex.s. c 34 § 143; 1967 c 6 § 1; 1961 c 114 § 1; 1941 c 231 § 1; Rem. Supp. 1941 § 7614-3. Formerly RCW 49.04.010 and 49.04.020.]

Reviser's note: This section was amended by 2011 c 308 § 1 and by 2011 1st sp.s. c 21 § 22, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

49.04.030 Supervisor of apprenticeship—Duties.

The director of labor and industries shall appoint and deputize an assistant director to be known as the supervisor of apprenticeship. Under the supervision of the director of labor and industries and with the advice and guidance of the apprenticeship council, the supervisor shall: (1) Encourage and promote apprenticeship programs conforming to the standards established under this chapter, and in harmony with the policies of the United States department of labor; (2) act as secretary of the apprenticeship council and of state apprenticeship committees; (3) when authorized by the apprenticeship council, register apprenticeship agreements that are in

the best interests of the apprentice and conform with standards established under this chapter; (4) keep a record of apprenticeship agreements and upon successful completion issue certificates of completion of apprenticeship; (5) when authorized by the council, terminate or cancel any apprenticeship agreements in accordance with the provisions of the agreements; and (6) conduct reviews for compliance with this chapter, rules established under this chapter, and 29 C.F.R. Parts 29 and 30.

The supervisor may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally. The director of labor and industries is authorized to appoint such other personnel as may be necessary to aid the supervisor of apprenticeship in the execution of the supervisor's functions under this chapter. [2011 c 308 § 2; 2001 c 204 § 2; 1979 ex.s. c 37 § 2; 1961 c 114 § 2; 1941 c 231 § 2; Rem. Supp. 1941 § 7614-4.]

Rehabilitation services for individuals with disabilities: Chapter 74.29 RCW.

49.04.040 Apprenticeship committees—Composition—Duties. Upon July 22, 2001, all newly approved apprenticeship programs must be represented by either a unilateral or joint apprenticeship committee. Apprenticeship committees must conform to this chapter, the rules adopted under this chapter, and 29 C.F.R. Parts 29 and 30 and must be approved by the apprenticeship council. Such apprenticeship committees shall be composed of an equal number of employer and employee representatives who may be chosen:

(1) From names submitted by the respective local or state employer and employee organizations served by the apprenticeship committee; or

(2) In a manner which selects representatives of management and nonmanagement served by the apprenticeship committee. The council may act as the apprentice representative when the council determines there is no feasible method to choose nonmanagement representatives.

Apprenticeship committees shall devise standards for apprenticeship programs and operate such programs in accordance with the standards established by this chapter and by rules adopted under this chapter. The council and supervisor may provide aid and technical assistance to apprenticeship program sponsors and applicants, or potential applicants. [2011 c 308 § 3; 2001 c 204 § 3; 1941 c 231 § 3; Rem. Supp. 1941 § 7614-5.]

49.04.050 Apprenticeship program standards. To be eligible for registration, apprenticeship program standards must conform to the rules adopted under this chapter. [2011 c 308 § 4; 2001 c 204 § 4; 1979 ex.s. c 37 § 3; 1961 c 114 § 3; 1941 c 231 § 4; Rem. Supp. 1941 § 7614-6.]

49.04.060 Apprenticeship agreements. For the purposes of this chapter an apprenticeship agreement is a written agreement between an apprentice and either the apprentice's program sponsor, or an apprenticeship committee acting as agent for a program sponsor, containing the terms and conditions of the employment and training of the apprentice.

[2011 c 308 § 5; 2001 c 204 § 5; 1941 c 231 § 5; Rem. Supp. 1941 § 7614-7.]

49.04.065 Decisions of apprenticeship council—Appeal to director of labor and industries—Judicial appeal. (1) Any decision of the apprenticeship council affecting registration and oversight of apprenticeship programs and agreements for federal purposes may be appealed to the director of labor and industries by filing a notice of appeal with the director within thirty days of the apprenticeship council's written decision. Any decision of the council affecting registration and oversight of apprenticeship programs and agreements for federal purposes not appealed within thirty days is final and binding, and not subject to further appeal.

(2) Upon receipt of a notice of appeal, the director or designee shall review the record created by the council and shall issue a written determination including his or her findings. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW.

(3) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal. [2011 c 308 § 6.]

Chapter 49.17 RCW

WASHINGTON INDUSTRIAL SAFETY AND HEALTH ACT

Sections

49.17.140	Appeal to board—Notification of assessment of penalty—Final order—Procedure—Redetermination—Hearing—Rules.
49.17.190	Violations—Criminal penalties.
49.17.243	Safety and health investment projects—Grants or contracts—Rules.
49.17.460	Definitions.
49.17.465	Handling hazardous drugs—Health care facilities—Rules.

49.17.140 Appeal to board—Notification of assessment of penalty—Final order—Procedure—Redetermination—Hearing—Rules. (1) If after an inspection or investigation the director or the director's authorized representative issues a citation under the authority of RCW 49.17.120 or 49.17.130, the department, within a reasonable time after the termination of such inspection or investigation, shall notify the employer using a method by which the mailing can be tracked or the delivery can be confirmed of the penalty to be assessed under the authority of RCW 49.17.180 and shall state that the employer has fifteen working days within which to notify the director that the employer wishes to appeal the citation or assessment of penalty. If, within fifteen working days from the communication of the notice issued by the director the employer fails to notify the director that the employer intends to appeal the citation or assessment penalty, and no notice is filed by any employee or representative of employees under subsection (3) of this section within such time, the citation and the assessment shall be deemed a final order of the department and not subject to review by any court or agency.

(2) If the director has reason to believe that an employer has failed to correct a violation for which the employer was previously cited and which has become a final order, the

director shall notify the employer using a method by which the mailing can be tracked or the delivery can be confirmed of such failure to correct the violation and of the penalty to be assessed under RCW 49.17.180 by reason of such failure, and shall state that the employer has fifteen working days from the communication of such notification and assessment of penalty to notify the director that the employer wishes to appeal the director's notification of the assessment of penalty. If, within fifteen working days from the receipt of notification issued by the director the employer fails to notify the director that the employer intends to appeal the notification of assessment of penalty, the notification and assessment of penalty shall be deemed a final order of the department and not subject to review by any court or agency.

(3) If any employer notifies the director that the employer intends to appeal the citation issued under either RCW 49.17.120 or 49.17.130 or notification of the assessment of a penalty issued under subsections (1) or (2) of this section, or if, within fifteen working days from the issuance of a citation under either RCW 49.17.120 or 49.17.130 any employee or representative of employees files a notice with the director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the director may reassume jurisdiction over the entire matter, or any portion thereof upon which notice of intention to appeal has been filed with the director pursuant to this subsection. If the director reassumes jurisdiction of all or any portion of the matter upon which notice of appeal has been filed with the director, any redetermination shall be completed and corrective notices of assessment of penalty, citations, or revised periods of abatement completed within a period of thirty working days. The thirty-working-day redetermination period may be extended up to fifteen additional working days upon agreement of all parties to the appeal. The redetermination shall then become final subject to direct appeal to the board of industrial insurance appeals within fifteen working days of such redetermination with service of notice of appeal upon the director. In the event that the director does not reassume jurisdiction as provided in this subsection, the director shall promptly notify the state board of industrial insurance appeals of all notifications of intention to appeal any such citations, any such notices of assessment of penalty and any employee or representative of employees notice of intention to appeal the period of time fixed for abatement of a violation and in addition certify a full copy of the record in such appeal matters to the board. The director shall adopt rules of procedure for the reassumption of jurisdiction under this subsection affording employers, employees, and employee representatives notice of the reassumption of jurisdiction by the director, and an opportunity to object or support the reassumption of jurisdiction, either in writing or orally at an informal conference to be held prior to the expiration of the redetermination period. Except as otherwise provided under subsection (4) of this section, a notice of appeal filed under this section shall stay the effectiveness of any citation or notice of the assessment of a penalty pending review by the board of industrial insurance appeals, but such appeal shall not stay the effectiveness of any order of immediate restraint issued by the director under the authority of RCW 49.17.130. The board of industrial insurance appeals shall afford an opportunity for a hearing in the case of each such appellant

and the department shall be represented in such hearing by the attorney general and the board shall in addition provide affected employees or authorized representatives of affected employees an opportunity to participate as parties to hearings under this subsection. The board shall thereafter make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals.

Upon application by an employer showing that a good faith effort to comply with the abatement requirements of a citation has been made and that the abatement has not been completed because of factors beyond the employer's control, the director after affording an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation.

(4) An appeal of any violation classified and cited as serious, willful, repeated serious violation, or failure to abate a serious violation does not stay abatement dates and requirements except as follows:

(a) An employer may request a stay of abatement for any serious, willful, repeated serious violation, or failure to abate a serious violation in a notice of appeal under subsection (3) of this section;

(b) When the director reassumes jurisdiction of an appeal under subsection (3) of this section, it will include the stay of abatement request. The issued redetermination decision will include a decision on the stay of abatement request. The department shall stay the abatement for any serious, willful, repeated serious violation, or failure to abate a serious violation where the department cannot determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. The decision on stay of abatement will be final unless the employer renews the request for a stay of abatement in any direct appeal of the redetermination to the board of industrial insurance appeals under subsection (3) of this section;

(c) The board of industrial insurance appeals shall adopt rules necessary for conducting an expedited review on any stay of abatement requests identified in the employer's notice of appeal, and shall issue a final decision within forty-five working days of the board's notice of filing of appeal. This rule making shall be initiated in 2011;

(d) Affected employees or their representatives must be afforded an opportunity to participate as parties in an expedited review for stay of abatement;

(e) The board shall grant a stay of an abatement for a serious, willful, repeated serious violation, or failure to abate a serious violation where there is good cause for a stay unless based on the preliminary evidence it is more likely than not that a stay would result in death or serious physical harm to a worker;

(f) As long as a motion to stay abatement is pending all abatement requirements will be stayed.

(5) When the board of industrial insurance appeals denies a stay of abatement and abatement is required while the appeal is adjudicated, the abatement process must be the same process as the process required for abatement upon a final order.

(6) The department shall develop rules necessary to implement subsections (4) and (5) of this section. In an application for a stay of abatement, the department will not grant a

stay when it can determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. The board will not grant a stay where based on the preliminary evidence it is more likely than not that a stay would result in death or serious physical harm to a worker. This rule making shall be initiated in 2011. [2011 c 301 § 13; 2011 c 91 § 1; 1994 c 61 § 1; 1986 c 20 § 1; 1973 c 80 § 14.]

Reviser's note: This section was amended by 2011 c 91 § 1 and by 2011 c 301 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

49.17.190 Violations—Criminal penalties. (1) Any person who gives advance notice of any inspection to be conducted under the authority of this chapter, without the consent of the director or his or her authorized representative, shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both.

(2) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than six months or by both.

(3) Any employer who wilfully and knowingly violates the requirements of RCW 49.17.060, any safety or health standard promulgated under this chapter, any existing rule or regulation governing the safety or health conditions of employment and adopted by the director, or any order issued granting a variance under RCW 49.17.080 or 49.17.090 and that violation caused death to any employee shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one hundred thousand dollars or by imprisonment for not more than six months or by both; except, that if the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than two hundred thousand dollars or by imprisonment for not more than three hundred sixty-four days, or by both.

(4) Any employer who has been issued an order immediately restraining a condition, practice, method, process, or means in the work place, pursuant to RCW 49.17.130 or 49.17.170, and who nevertheless continues such condition, practice, method, process, or means, or who continues to use a machine or equipment or part thereof to which a notice prohibiting such use has been attached, shall be guilty of a gross misdemeanor, and upon conviction shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than six months, or by both.

(5) Any employer who shall knowingly remove, displace, damage, or destroy, or cause to be removed, displaced, damaged, or destroyed any safety device or safeguard required to be present and maintained by any safety or health standard, rule, or order promulgated pursuant to this chapter, or pursuant to the authority vested in the director under RCW 43.22.050 shall, upon conviction, be guilty of a misdemeanor and be punished by a fine of not more than one thousand dol-

lars or by imprisonment for not more than ninety days, or by both.

(6) Whenever the director has reasonable cause to believe that any provision of this section defining a crime has been violated by an employer, the director shall cause a record of such alleged violation to be prepared, a copy of which shall be referred to the prosecuting attorney of the county wherein such alleged violation occurred, and the prosecuting attorney of such county shall in writing advise the director of the disposition he or she shall make of the alleged violation. [2011 c 96 § 40; 2010 c 8 § 12016; 1986 c 20 § 3; 1973 c 80 § 19.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

49.17.243 Safety and health investment projects—Grants or contracts—Rules. (1) The director is authorized to provide funding from the medical aid fund established under RCW 51.44.020, by grant or contract, for safety and health investment projects for workplaces insured for workers' compensation through the department's state fund. This shall include projects to: Prevent workplace injuries, illnesses, and fatalities; create early return-to-work programs; and reduce long-term disability through the cooperation of employers and employees or their representatives.

(2) Awards may be granted to organizations such as, but not limited to, trade associations, business associations, employers, employees, labor unions, employee organizations, joint labor and management groups, and educational institutions in collaboration with state fund employer and employee representatives.

(3) Awards may not be used for lobbying or political activities; supporting, opposing, or developing legislative or regulatory initiatives; any activity not designed to reduce workplace injuries, illnesses, or fatalities; or reimbursing employers for the normal costs of complying with safety and health rules.

(4) Funds for awards shall be distributed as follows: At least twenty-five percent for projects designed to develop and implement innovative and effective return-to-work programs for injured workers; at least twenty-five percent for projects that specifically address the needs of small businesses; and at least fifty percent for projects that foster workplace injury and illness prevention by addressing priorities identified by the department in cooperation with the Washington industrial safety and health act advisory committee and the workers' compensation advisory committee.

(5) The department shall adopt rules as necessary to implement this section. [2011 1st sp.s. c 37 § 501.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

49.17.460 Definitions. The definitions in this section apply throughout RCW 49.17.465, this section, and section 1, chapter 39, Laws of 2011 unless the context clearly requires otherwise.

(1) "Antineoplastic drug" means a chemotherapeutic agent that controls or kills cancer cells.

(2) "Hazardous drugs" means any drug identified by the national institute for occupational safety and health at the centers for disease control or any drug that meets at least one of the following six criteria: Carcinogenicity, teratogenicity

or developmental toxicity, reproductive toxicity in humans, organ toxicity at low doses in humans or animals, genotoxicity, or new drugs that mimic existing hazardous drugs in structure or toxicity. [2011 c 39 § 2.]

Declaration—Intent—2011 c 39: "The legislature declares that health care personnel who work with or near hazardous drugs in health care settings may be exposed to these agents in the air, on work surfaces, clothing, and medical equipment or through patient contact. According to the national institute for occupational safety and health (NIOSH), early concerns about occupational exposure to antineoplastic drugs first appeared in the 1970s. Antineoplastic and other hazardous drugs may cause skin rashes, infertility, miscarriage, birth defects, and have been linked to a wide variety of cancers. The national institute for occupational safety and health published an alert on preventing occupational exposures to antineoplastic and other hazardous drugs in health care settings in 2004 with an update in 2010. In this alert, the institute "presents a standard precautions or universal precautions approach to handling hazardous drugs safely: that is, NIOSH recommends that all hazardous drugs be handled as outlined in this Alert." It is the intent of the legislature to require health care facilities to follow rules requiring compliance with all aspects of the institute's alert regardless of the setting in order to protect health care personnel from hazardous exposure to such drugs." [2011 c 39 § 1.]

49.17.465 Handling hazardous drugs—Health care facilities—Rules. The director of labor and industries shall adopt by rule requirements for the handling of antineoplastic and other hazardous drugs in health care facilities regardless of the setting. Rule making under this section shall consider input from hospitals, organizations representing health care personnel, other stakeholders and shall consider reasonable time for facilities to implement new requirements. The rules will be consistent with and not exceed provisions adopted by the national institute for occupational safety and health's 2004 alert on preventing occupational exposures to antineoplastic and other hazardous drugs in health care settings as updated in 2010. The department's adoption of the rules may incorporate updates and changes to the institute's guidelines as made by the centers for disease control and prevention. Enforcement of these requirements will be according to all provisions in this chapter. [2011 c 39 § 3.]

Declaration—Intent—2011 c 39: See note following RCW 49.17.460.

Chapter 49.24 RCW

HEALTH AND SAFETY— UNDERGROUND WORKERS

Sections

49.24.060 Penalty.

49.24.060 Penalty. Violation of or noncompliance with any provision of *this article by any employer, manager, superintendent, foreman or other person having direction or control of such work shall be a gross misdemeanor punishable by a fine of not less than two hundred and fifty dollars or by imprisonment for up to three hundred sixty-four days or by both such fine and imprisonment. [2011 c 96 § 41; 1937 c 131 § 7; RRS § 7666-7.]

***Reviser's note:** "this article" appears in 1937 c 131, an eight section act that was not subdivided by "article" organization. The act is codified as RCW 49.24.010 through 49.24.070.

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Chapter 49.26 RCW

HEALTH AND SAFETY—ASBESTOS

Sections

49.26.110 Asbestos projects—Worker's and supervisor's certificates.

49.26.110 Asbestos projects—Worker's and supervisor's certificates. (1) No employee or other individual is eligible to do work governed by this chapter unless issued a certificate by the department.

(2) To qualify for a certificate:

(a) Certified asbestos workers must have successfully completed a four-day training course. Certified asbestos supervisors must have completed a five-day training course. Training courses shall be provided or approved by the department; shall cover such topics as the health and safety aspects of the removal and encapsulation of asbestos, including but not limited to the federal and state standards regarding protective clothing, respirator use, disposal, air monitoring, cleaning, and decontamination; and shall meet such additional qualifications as may be established by the department by rule for the type of certification sought. The department may require the successful completion of annual refresher courses provided or approved by the department for continued certification as an asbestos worker or supervisor. However, the authority of the director to adopt rules implementing this section is limited to rules that are specifically required, and only to the extent specifically required, for the standards to be as stringent as the applicable federal laws governing work subject to this chapter; and

(b) All applicants for certification as asbestos workers or supervisors must pass an examination in the type of certification sought which shall be provided or approved by the department.

These requirements are intended to represent the minimum requirements for certification and shall not preclude contractors or employers from providing additional education or training.

(3) The department shall provide for the reciprocal certification of any individual trained to engage in asbestos projects in another state when the prior training is shown to be substantially similar to the training required by the department. Nothing shall prevent the department from requiring such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, or revoke a certificate, as provided under RCW 49.26.140, for failure of the holder to comply with any requirement of this chapter or chapter 49.17 RCW, or any rule adopted under those chapters, or applicable health and safety standards and regulations. In addition to any penalty imposed under RCW 49.26.016, the department may suspend or revoke any certificate issued under this chapter for a period of not less than six months upon the following grounds:

(a) The certificate was obtained through error or fraud; or

(b) The holder thereof is judged to be incompetent to carry out the work for which the certificate was issued.

Before any certificate may be denied, suspended, or revoked, the holder thereof shall be given written notice of the department's intention to do so, mailed using a method by

which the mailing can be tracked or the delivery can be confirmed to the holder's last known address. The notice shall enumerate the allegations against such holder, and shall give him or her the opportunity to request a hearing before the department. At such hearing, the department and the holder shall have opportunity to produce witnesses and give testimony.

(5) A denial, suspension, or revocation order may be appealed to the board of industrial insurance appeals within fifteen working days after the denial, suspension, or revocation order is entered. The notice of appeal may be filed with the department or the board of industrial insurance appeals. The board of industrial insurance appeals shall hold the hearing in accordance with procedures established in RCW 49.17.140. Any party aggrieved by an order of the board of industrial insurance appeals may obtain superior court review in the manner provided in RCW 49.17.150.

(6) Each person certified under this chapter shall display, upon the request of an authorized representative of the department, valid identification issued by the department. [2011 c 301 § 14; 1995 c 218 § 4; 1989 c 154 § 5. Prior: 1988 c 271 § 10; 1985 c 387 § 2.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

Chapter 49.28 RCW

HOURS OF LABOR

Sections

49.28.130 Hours of health care facility employees—Definitions.

49.28.130 Hours of health care facility employees—Definitions. The definitions in this section apply throughout this section and RCW 49.28.140 and 49.28.150 unless the context clearly requires otherwise.

(1) "Employee" means a licensed practical nurse or a registered nurse licensed under chapter 18.79 RCW employed by a health care facility who is involved in direct patient care activities or clinical services and receives an hourly wage.

(2) "Employer" means an individual, partnership, association, corporation, the state, a political subdivision of the state, or person or group of persons, acting directly or indirectly in the interest of a health care facility.

(3)(a) "Health care facility" means the following facilities, or any part of the facility, including such facilities if owned and operated by a political subdivision or instrumentality of the state, that operate on a twenty-four hours per day, seven days per week basis:

(i) Hospices licensed under chapter 70.127 RCW;

(ii) Hospitals licensed under chapter 70.41 RCW;

(iii) Rural health care facilities as defined in RCW 70.175.020;

(iv) Psychiatric hospitals licensed under chapter 71.12 RCW; or

(v) Facilities owned and operated by the department of corrections or by a governing unit as defined in RCW 70.48.020 in a correctional institution as defined in RCW 9.94.049 that provide health care services to inmates as defined in RCW 72.09.015.

(b) If a nursing home regulated under chapter 18.51 RCW or a home health agency regulated under chapter 70.127 RCW is operating under the license of a health care facility, the nursing home or home health agency is considered part of the health care facility for the purposes of this subsection.

(4) "Overtime" means the hours worked in excess of an agreed upon, predetermined, regularly scheduled shift within a twenty-four hour period not to exceed twelve hours in a twenty-four hour period or eighty hours in a consecutive fourteen-day period.

(5) "On-call time" means time spent by an employee who is not working on the premises of the place of employment but who is compensated for availability or who, as a condition of employment, has agreed to be available to return to the premises of the place of employment on short notice if the need arises.

(6) "Reasonable efforts" means that the employer, to the extent reasonably possible, does all of the following but is unable to obtain staffing coverage:

(a) Seeks individuals to volunteer to work extra time from all available qualified staff who are working;

(b) Contacts qualified employees who have made themselves available to work extra time;

(c) Seeks the use of per diem staff; and

(d) Seeks personnel from a contracted temporary agency when such staffing is permitted by law or an applicable collective bargaining agreement, and when the employer regularly uses a contracted temporary agency.

(7) "Unforeseeable emergent circumstance" means (a) any unforeseen declared national, state, or municipal emergency; (b) when a health care facility disaster plan is activated; or (c) any unforeseen disaster or other catastrophic event which substantially affects or increases the need for health care services. [2011 c 251 § 1; 2002 c 112 § 2.]

Finding—2002 c 112: "Washington state is experiencing a critical shortage of qualified, competent health care workers. To safeguard the health, efficiency, and general well-being of health care workers and promote patient safety and quality of care, the legislature finds, as a matter of public policy, that required overtime work should be limited with reasonable safeguards in order to ensure that the public will continue to receive safe, quality care." [2002 c 112 § 1.]

Chapter 49.40 RCW SEASONAL LABOR

Sections

49.40.060 Findings and award.

49.40.060 Findings and award. The director of labor and industries, or his or her deputy holding the hearing shall, after such hearing, determine the amount due from the employer to the employee, and shall make findings of fact and an award in accordance therewith, which findings and award shall be filed in the office of the director and a copy thereof served upon the employer and upon the employee using a method by which the mailing can be tracked or the delivery can be confirmed directed to their last known post office address. [2011 c 301 § 15; 2010 c 8 § 12035; 1919 c 191 § 6; RRS § 7608.]

[2011 RCW Supp—page 1150]

Chapter 49.44 RCW

VIOLATIONS—PROHIBITED PRACTICES

Sections

49.44.010 Blacklisting—Penalty.

49.44.010 Blacklisting—Penalty. Every person in this state who shall wilfully and maliciously, send or deliver, or make or cause to be made, for the purpose of being delivered or sent or part with the possession of any paper, letter or writing, with or without name signed thereto, or signed with a fictitious name, or with any letter, mark or other designation, or publish or cause to be published any statement for the purpose of preventing any other person from obtaining employment in this state or elsewhere, and every person who shall wilfully and maliciously "blacklist" or cause to be "blacklisted" any person or persons, by writing, printing or publishing, or causing the same to be done, the name, or mark, or designation representing the name of any person in any paper, pamphlet, circular or book, together with any statement concerning persons so named, or publish or cause to be published that any person is a member of any secret organization, for the purpose of preventing such person from securing employment, or who shall wilfully and maliciously make or issue any statement or paper that will tend to influence or prejudice the mind of any employer against the person of such person seeking employment, or any person who shall do any of the things mentioned in this section for the purpose of causing the discharge of any person employed by any railroad or other company, corporation, individual or individuals, shall, on conviction thereof, be adjudged guilty of misdemeanor and punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than ninety days nor more than three hundred sixty-four days, or by both such fine and imprisonment. [2011 c 96 § 42; 1899 c 23 § 1; RRS § 7599.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Interference with or discharge from employment of member of organized militia: RCW 38.40.040, 38.40.050.

Chapter 49.46 RCW MINIMUM WAGE ACT

Sections

49.46.010 Definitions. (*Effective until December 31, 2011.*)

49.46.010 Definitions. (*Effective December 31, 2011.*)

49.46.010 Definitions. (*Effective until December 31, 2011.*) As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Employ" includes to permit to work;

(3) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesperson as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the human resources director pursuant to chapter 41.06 RCW for employees employed under the director of personnel's jurisdiction;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement, or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor or carrier;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(o) Any farm intern providing his or her services to a small farm which has a special certificate issued under RCW 49.12.465;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(6) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry;

(7) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director. [2011 1st sp.s. c 43 § 461. Prior: 2010 c 160 § 2; 2010 c 8 § 12040; 2002 c 354 § 231; 1997 c 203 § 3; 1993 c 281 § 56; 1989 c 1 § 1 (Initiative Measure No. 518, approved November 8, 1988); 1984 c 7 § 364; 1977 ex.s. c 69 § 1; 1975 1st ex.s. c 289 § 1; 1974 ex.s. c 107 § 1; 1961 ex.s. c 18 § 2; 1959 c 294 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Expiration date—2011 1st sp.s. c 43 § 461: "Section 461 of this act expires December 31, 2011." [2011 1st sp.s. c 43 § 483.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Expiration date—2010 c 160: See note following RCW 49.12.465.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Effect of offset of military pay on status of bona fide executive, administrative, and professional employees: RCW 73.16.080.

Additional notes found at www.leg.wa.gov

49.46.010 Definitions. (Effective December 31, 2011.)

As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Employ" includes to permit to work;

(3) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesperson as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the human resources director pursuant to

ant to chapter 41.06 RCW for employees employed under the director of personnel's jurisdiction;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement, or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor or carrier;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(6) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of

sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry;

(7) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director. [2011 1st sp.s. c 43 § 462; 2010 c 8 § 12040; 2002 c 354 § 231; 1997 c 203 § 3; 1993 c 281 § 56; 1989 c 1 § 1 (Initiative Measure No. 518, approved November 8, 1988); 1984 c 7 § 364; 1977 ex.s. c 69 § 1; 1975 1st ex.s. c 289 § 1; 1974 ex.s. c 107 § 1; 1961 ex.s. c 18 § 2; 1959 c 294 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2011 1st sp.s. c 43 § 462: "Section 462 of this act takes effect December 31, 2011." [2011 1st sp.s. c 43 § 484.]

Purpose—2011 1st sp.s. c 43: See note following RCW 43.19.003.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Effect of offset of military pay on status of bona fide executive, administrative, and professional employees: RCW 73.16.080.

Additional notes found at www.leg.wa.gov

Chapter 49.48 RCW

WAGES—PAYMENT—COLLECTION

Sections

49.48.083 Wage complaints—Duty of department to investigate—Citations and notices of assessment—Civil penalties.

49.48.083 Wage complaints—Duty of department to investigate—Citations and notices of assessment—Civil penalties. (1) If an employee files a wage complaint with the department, the department shall investigate the wage complaint. Unless otherwise resolved, the department shall issue either a citation and notice of assessment or a determination of compliance no later than sixty days after the date on which the department received the wage complaint. The department may extend the time period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the time period and specifying the duration of the extension. The department may not investigate any alleged violation of a wage payment requirement that occurred more than three years before the date that the employee filed the wage complaint. The department shall send the citation and notice of assessment or the determination of compliance to both the employer and the employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(2) If the department determines that an employer has violated a wage payment requirement and issues to the employer a citation and notice of assessment, the department may order the employer to pay employees all wages owed, including interest of one percent per month on all wages owed, to the employee. The wages and interest owed must be calculated from the first date wages were owed to the employee, except that the department may not order the employer to pay any wages and interest that were owed more than three years before the date the wage complaint was filed with the department.

(3) If the department determines that the violation of the wage payment requirement was a willful violation, the department also may order the employer to pay the department a civil penalty as specified in (a) of this subsection.

(a) A civil penalty for a willful violation of a wage payment requirement shall be not less than one thousand dollars or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. The maximum civil penalty for a willful violation of a wage payment requirement shall be twenty thousand dollars.

(b) The department may not assess a civil penalty if the employer reasonably relied on: (i) A rule related to any wage payment requirement; (ii) a written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or (iii) an interpretive or administrative policy issued by the department and filed with the office of the code reviser. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department shall maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an employer is immune from civil penalties under (b)(ii) of this subsection.

(c) The department shall waive any civil penalty assessed against an employer under this section if the employer is not a repeat willful violator, and the director determines that the employer has provided payment to the employee of all wages that the department determined that the employer owed to the employee, including interest, within ten business days of the employer's receipt of the citation and notice of assessment from the department.

(d) The department may waive or reduce at any time a civil penalty assessed under this section if the director determines that the employer paid all wages and interest owed to an employee.

(e) The department shall deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(4) Upon payment by an employer, and acceptance by an employee, of all wages and interest assessed by the department in a citation and notice of assessment issued to the employer, the fact of such payment by the employer, and of such acceptance by the employee, shall: (a) Constitute a full and complete satisfaction by the employer of all specific wage payment requirements addressed in the citation and notice of assessment; and (b) bar the employee from initiating or pursuing any court action or other judicial or administrative proceeding based on the specific wage payment requirements addressed in the citation and notice of assessment. The citation and notice of assessment shall include a notification and summary of the specific requirements of this subsection.

(5) The applicable statute of limitations for civil actions is tolled during the department's investigation of an employee's wage complaint against an employer. For the purposes of this subsection, the department's investigation begins on the date the employee files the wage complaint with the department and ends when: (a) The wage complaint is finally determined through a final and binding citation and notice of assessment or determination of compliance; or (b) the department notifies the employer and the employee in

writing that the wage complaint has been otherwise resolved or that the employee has elected to terminate the department's administrative action under RCW 49.48.085. [2011 c 301 § 16; 2010 c 42 § 2; 2006 c 89 § 2.]

Captions not law—2006 c 89: See note following RCW 49.48.082.

Chapter 49.60 RCW DISCRIMINATION— HUMAN RIGHTS COMMISSION

Sections

49.60.210	Unfair practices—Discrimination against person opposing unfair practice—Retaliation against whistleblower.
49.60.215	Unfair practices of places of public resort, accommodation, assemblage, amusement—Trained dog guides and service animals.
49.60.218	Use of dog guide or service animal—Unfair practice—Definitions.

49.60.210 Unfair practices—Discrimination against person opposing unfair practice—Retaliation against whistleblower.

(1) It is an unfair practice for any employer, employment agency, labor union, or other person to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter, or because he or she has filed a charge, testified, or assisted in any proceeding under this chapter.

(2) It is an unfair practice for a government agency or government manager or supervisor to retaliate against a whistleblower as defined in chapter 42.40 RCW.

(3) It is an unfair practice for any employer, employment agency, labor union, government agency, government manager, or government supervisor to discharge, expel, discriminate, or otherwise retaliate against an individual assisting with an office of fraud and accountability investigation under RCW 74.04.012, unless the individual has willfully disregarded the truth in providing information to the office. [2011 1st sp.s. c 42 § 25; 1992 c 118 § 4; 1985 c 185 § 18; 1957 c 37 § 12. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

49.60.215 Unfair practices of places of public resort, accommodation, assemblage, amusement—Trained dog guides and service animals.

(1) It shall be an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, national origin, sexual orientation, sex, honorably discharged veteran or military status, status as a mother breastfeeding her child, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability: PROVIDED, That this section shall not be construed

to require structural changes, modifications, or additions to make any place accessible to a person with a disability except as otherwise required by law: PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice.

(2) This section does not apply to food establishments, as defined in RCW 49.60.218, with respect to the use of a trained dog guide or service animal by a person with a disability. Food establishments are subject to RCW 49.60.218 with respect to trained dog guides and service animals. [2011 c 237 § 1; 2009 c 164 § 2; 2007 c 187 § 12; 2006 c 4 § 13; 1997 c 271 § 13; 1993 c 510 § 16. Prior: 1985 c 203 § 1; 1985 c 90 § 6; 1979 c 127 § 7; 1957 c 37 § 14.]

Denial of civil rights: RCW 9.91.010.

Additional notes found at www.leg.wa.gov

49.60.218 Use of dog guide or service animal—Unfair practice—Definitions. (1) It shall be an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any food establishment, except for conditions and limitations established by law and applicable to all persons, on the basis of the use of a dog guide or service animal by a person with a disability: PROVIDED, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a person with a disability except as otherwise required by law: PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice.

(2) A food establishment shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability in accordance with subsection (1) of this section if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability. In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a facility, a food establishment shall act in accordance with all applicable laws and regulations.

(3) For the purposes of this section:

(a) "Service animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Except as provided in subsection (2) of this section, other species of animals, whether wild or domestic, trained or untrained, are not service animals. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as

medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks.

(b) "Food establishment" means a place of business that sells or serves food for human consumption with a North American industry classification system code within "445110," "445120," "445210," "445220," "445230," "445291," "445292," "445299," "452910," "722110," "722211," "722212," "722213," or "722410." [2011 c 237 § 2.]

Chapter 49.74 RCW AFFIRMATIVE ACTION

Sections

49.74.020 Affirmative action rules—Noncompliance—Notification—Hearing.

49.74.030 Noncompliance—Conciliation—Order.

49.74.020 Affirmative action rules—Noncompliance—Notification—Hearing. If the commission reasonably believes that a state agency, an institution of higher education, or the state patrol has failed to comply with an affirmative action rule adopted under RCW 41.06.150 or 43.43.340, the commission shall notify the director of the state agency, president of the institution of higher education, or chief of the Washington state patrol of the noncompliance, as well as the human resources director. The commission shall give the director of the state agency, president of the institution of higher education, or chief of the Washington state patrol an opportunity to be heard on the failure to comply. [2011 1st sp.s. c 43 § 463; 1993 c 281 § 57; 1985 c 365 § 9.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

49.74.030 Noncompliance—Conciliation—Order. The commission in conjunction with the department of enterprise services, the office of financial management, or the state patrol, whichever is appropriate, shall attempt to resolve the noncompliance through conciliation. If an agreement is reached for the elimination of noncompliance, the agreement shall be reduced to writing and an order shall be issued by the commission setting forth the terms of the agreement. The noncomplying state agency, institution of higher education, or state patrol shall make a good faith effort to conciliate and make a full commitment to correct the noncompliance with any action that may be necessary to achieve compliance, provided such action is not inconsistent with the rules adopted under RCW 41.06.150(5) and 43.43.340(5), whichever is appropriate. [2011 1st sp.s. c 43 § 464; 2002 c 354 § 246; 2002 c 354 § 245; 1993 c 281 § 58; 1985 c 365 § 10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Additional notes found at www.leg.wa.gov

Chapter 49.86 RCW FAMILY LEAVE INSURANCE

Sections

49.86.030 Eligibility for benefits.
49.86.210 Reports.

49.86.030 Eligibility for benefits. Beginning October 1, 2015, family leave insurance benefits are payable to an individual during a period in which the individual is unable to perform his or her regular or customary work because he or she is on family leave if the individual:

(1) Files a claim for benefits in each week in which the individual is on family leave, and as required by rules adopted by the director;

(2) Has been employed for at least six hundred eighty hours in employment during the individual's qualifying year;

(3) Establishes an application year. An application year may not be established if the qualifying year includes hours worked before establishment of a previous application year;

(4) Consents to the disclosure of information or records deemed private and confidential under chapter 50.13 RCW. Initial disclosure of this information and these records by the employment security department to the department is solely for purposes related to the administration of this chapter. Further disclosure of this information or these records is subject to RCW 49.86.020(3);

(5) Discloses whether or not he or she owes child support obligations as defined in RCW 50.40.050; and

(6) Documents that he or she has provided the employer from whom family leave is to be taken with written notice of the individual's intention to take family leave in the same manner as an employee is required to provide notice in RCW 49.78.250. [2011 1st sp.s. c 25 § 1; 2009 c 544 § 1; 2007 c 357 § 5.]

49.86.210 Reports. Beginning September 1, 2016, the department shall report to the legislature by September 1st of each year on projected and actual program participation, premium rates, fund balances, and outreach efforts. [2011 1st sp.s. c 25 § 2; 2009 c 544 § 2; 2007 c 357 § 26.]

Chapter 49.90 RCW SENSORY DISABILITIES

Sections

49.90.010 Sensory disabilities—State agencies—Need for service animal training—Definition.

49.90.010 Sensory disabilities—State agencies—Need for service animal training—Definition. (1) Within this section, "sensory disability" means a sensory condition that materially limits, contributes to limiting, or, if not corrected or accommodated, will probably result in limiting an individual's activities or functioning.

(2) The office of financial management shall adopt rules that authorize state agencies to provide allowances to

employees with sensory disabilities who must attend training necessary to attain a new service animal. The employee's absence must be treated in the same manner as that granted to employees who are absent to attend training that supports or improves their job performance, except that the employee shall not be eligible for reimbursement under RCW 43.03.050 or 43.03.060. The office of financial management shall adopt rules as necessary to implement this chapter.

(3) If the necessity to attend training for a new service animal is foreseeable and the training will cause the employee to miss work, the employee shall provide the employer with not less than thirty days' notice, before the date the absence is to begin, of the employee's impending absence. If the date of the training requires the absence to begin in less than thirty days, the employee shall provide notice as is practicable.

(4) An agency may require that a request to attend service animal training be supported by a certification issued by the relevant training organization. The employee must provide, in a timely manner, a copy of the certification to the agency. Certification provided under this section is sufficient if it states: (a) The date on which the service animal training session is scheduled to commence; and (b) the session's duration. [2011 1st sp.s. c 43 § 465; 2009 c 294 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2009 c 294: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 30, 2009]." [2009 c 294 § 11.]

Title 50

UNEMPLOYMENT COMPENSATION

Chapters

50.04 Definitions.

50.13 Records and information—Privacy and confidentiality.

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Chapter 50.04 RCW

DEFINITIONS

Sections

50.04.075 Dislocated worker. (*Effective July 1, 2012.*)

50.04.245 Employment—Services performed for temporary services agency, employee leasing agency, or services referral agency—Amateur sports officials—Definitions.

50.04.246 Employment—Amateur sports officials.

50.04.075 Dislocated worker. (*Effective July 1, 2012.*)
(1) With respect to claims with an effective date prior to July 1, 2012, "dislocated worker" means any individual who:

(a) Has been terminated or received a notice of termination from employment;

(b) Is eligible for or has exhausted entitlement to unemployment compensation benefits; and

(c) Is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for their skills in that occupation or industry.

(2) With respect to claims with an effective date on or after July 1, 2012, "dislocated worker" means any individual who:

(a) Has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment, or has separated from a declining occupation; and

(b) Is eligible for or has exhausted entitlement to unemployment compensation benefits. [2011 c 4 § 12; 1984 c 181 § 1.]

Contingent effective date—2011 c 4 §§ 7-15: See note following RCW 50.20.099.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Dislocated worker's eligibility for benefits: RCW 50.20.043.

50.04.245 Employment—Services performed for temporary services agency, employee leasing agency, or services referral agency—Amateur sports officials—Definitions. (1) Subject to the other provisions of this title, personal services performed for, or for the benefit of, a third party pursuant to a contract with a temporary staffing services company or services referral agency constitutes employment for the temporary staffing services company or services referral agency when the agency is responsible, under contract or in fact, for the payment of wages in remuneration for the services performed.

(2) The temporary staffing services company or services referral agency is considered the employer as defined in RCW 50.04.080.

(3) Services performed by amateur sports officials, on a contest-by-contest basis, for interscholastic and youth or adult recreational sports contests are not considered employment for a services referral agency if the agency is not responsible for payment to the amateur sports officials unless and until the agency is paid or reimbursed by a third party.

(4) For the purposes of this section:

(a) "Temporary staffing services company" means an individual or entity that engages in: Recruiting and hiring its own employees; finding other organizations that need the services of those employees; and assigning those employees on a temporary basis to perform work at or services for a client to support or supplement the client's workforces, or to provide assistance in special work situations, such as employee absences, skill shortages, and seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the client. "Temporary staffing services company" does not include professional employer organizations as defined in RCW 50.04.298, permanent employee leasing, or permanent employee placement services.

(b) "Services referral agency" means an individual or entity other than a professional employer organization as defined in RCW 50.04.298 that is engaged in the business of

offering the services of one or more individuals to perform specific tasks for a third party.

(c) "Amateur sports official" means any person who serves as a neutral participant in any sports contest where the players are not compensated including, but not limited to, an umpire, referee, judge, linesperson, scorekeeper, timekeeper, or organizer. [2011 c 264 § 1; 2007 c 146 § 14; 1995 c 120 § 1.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Additional notes found at www.leg.wa.gov

50.04.246 Employment—Amateur sports officials. Except for services subject to RCW 50.44.010, 50.44.020, 50.44.030, or 50.50.010, the term "employment" shall not include services performed by amateur sports officials, on a contest-by-contest basis, for interscholastic and youth or adult recreational sports contests. For purposes of this section, "amateur sports official" means any person who serves as a neutral participant in any sports contest where the players are not compensated, including but not limited to, an umpire, referee, judge, linesperson, scorekeeper, timekeeper, or organizer, and who is not otherwise employed by the sponsor of the sports contest. [2011 c 264 § 2.]

Chapter 50.13 RCW

RECORDS AND INFORMATION— PRIVACY AND CONFIDENTIALITY

Sections

50.13.060 Access to records or information by governmental agencies.

50.13.060 Access to records or information by governmental agencies. (1) Governmental agencies, including law enforcement agencies, prosecuting agencies, and the executive branch, whether state, local, or federal shall have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:

(a) The agency submits an application in writing to the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the department; and

(b) The director, commissioner, chief executive, or other official of the agency has verified the need for the specific information in writing either on the application or on a separate document; and

(c) The agency requesting access has served a copy of the application for records or information on the individual or employing unit whose records or information are sought and has provided the department with proof of service. Service shall be made in a manner which conforms to the civil rules for superior court. The requesting agency shall include with the copy of the application a statement to the effect that the individual or employing unit may contact the public records officer of the employment security department to state any objections to the release of the records or information. The employment security department shall not act upon the appli-

cation of the requesting agency until at least five days after service on the concerned individual or employing unit. The employment security department shall consider any objections raised by the concerned individual or employing unit in deciding whether the requesting agency needs the information or records for official purposes.

(2) The requirements of subsections (1) and (9) of this section shall not apply to the state legislative branch. The state legislature shall have access to information or records deemed private and confidential under this chapter, if the legislature or a legislative committee finds that the information or records are necessary and for official purposes. If the employment security department does not make information or records available as provided in this subsection, the legislature may exercise its authority granted by chapter 44.16 RCW.

(3) In cases of emergency the governmental agency requesting access shall not be required to formally comply with the provisions of subsection (1) of this section at the time of the request if the procedures required by subsection (1) of this section are complied with by the requesting agency following the receipt of any records or information deemed private and confidential under this chapter. An emergency is defined as a situation in which irreparable harm or damage could occur if records or information are not released immediately.

(4) The requirements of subsection (1)(c) of this section shall not apply to governmental agencies where the procedures would frustrate the investigation of possible violations of criminal laws or to the release of employing unit names, addresses, number of employees, and aggregate employer wage data for the purpose of state governmental agencies preparing small business economic impact statements under chapter 19.85 RCW or preparing cost-benefit analyses under RCW 34.05.328(1) (c) and (d). Information provided by the department and held to be private and confidential under state or federal laws must not be misused or released to unauthorized parties. A person who misuses such information or releases such information to unauthorized parties is subject to the sanctions in RCW 50.13.080.

(5) Governmental agencies shall have access to certain records or information, limited to such items as names, addresses, social security numbers, and general information about benefit entitlement or employer information possessed by the department, for comparison purposes with records or information possessed by the requesting agency to detect improper or fraudulent claims, or to determine potential tax liability or employer compliance with registration and licensing requirements. In those cases the governmental agency shall not be required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied.

(6) Governmental agencies may have access to certain records and information, limited to employer information possessed by the department for purposes authorized in chapter 50.38 RCW. Access to these records and information is limited to only those individuals conducting authorized statistical analysis, research, and evaluation studies. Only in cases consistent with the purposes of chapter 50.38 RCW are government agencies not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of

subsection (1) of this section must be satisfied. Information provided by the department and held to be private and confidential under state or federal laws shall not be misused or released to unauthorized parties subject to the sanctions in RCW 50.13.080.

(7) Disclosure to governmental agencies of information or records obtained by the employment security department from the federal government shall be governed by any applicable federal law or any agreement between the federal government and the employment security department where so required by federal law. When federal law does not apply to the records or information state law shall control.

(8) The department may provide information for purposes of statistical analysis and evaluation of the WorkFirst program or any successor state welfare program to the department of social and health services, the office of financial management, and other governmental entities with oversight or evaluation responsibilities for the program in accordance with RCW 43.20A.080. The confidential information provided by the department shall remain the property of the department and may be used by the authorized requesting agencies only for statistical analysis, research, and evaluation purposes as provided in RCW 74.08A.410 and 74.08A.420. The department of social and health services, the office of financial management, or other governmental entities with oversight or evaluation responsibilities for the program are not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section and applicable federal laws and regulations must be satisfied. The confidential information used for evaluation and analysis of welfare reform supplied to the authorized requesting entities with regard to the WorkFirst program or any successor state welfare program are exempt from public inspection and copying under chapter 42.56 RCW.

(9) The disclosure of any records or information by a governmental agency which has obtained the records or information under this section is prohibited unless the disclosure is (a) directly connected to the official purpose for which the records or information were obtained or (b) to another governmental agency which would be permitted to obtain the records or information under subsection (4) or (5) of this section.

(10) In conducting periodic salary or fringe benefit studies pursuant to law, the office of financial management shall have access to records of the employment security department as may be required for such studies. For such purposes, the requirements of subsection (1)(c) of this section need not apply.

(11)(a) To promote the reemployment of job seekers, the commissioner may enter into data-sharing contracts with partners of the one-stop career development system. The contracts shall provide for the transfer of data only to the extent that the transfer is necessary for the efficient provisions of workforce programs, including but not limited to public labor exchange, unemployment insurance, worker training and retraining, vocational rehabilitation, vocational education, adult education, transition from public assistance, and support services. The transfer of information under contracts with one-stop partners is exempt from subsection (1)(c) of this section.

(b) An individual who applies for services from the department and whose information will be shared under (a) of this subsection (11) must be notified that his or her private and confidential information in the department's records will be shared among the one-stop partners to facilitate the delivery of one-stop services to the individual. The notice must advise the individual that he or she may request that private and confidential information not be shared among the one-stop partners and the department must honor the request. In addition, the notice must:

(i) Advise the individual that if he or she requests that private and confidential information not be shared among one-stop partners, the request will in no way affect eligibility for services;

(ii) Describe the nature of the information to be shared, the general use of the information by one-stop partner representatives, and among whom the information will be shared;

(iii) Inform the individual that shared information will be used only for the purpose of delivering one-stop services and that further disclosure of the information is prohibited under contract and is not subject to disclosure under chapter 42.56 RCW; and

(iv) Be provided in English and an alternative language selected by the one-stop center or job service center as appropriate for the community where the center is located.

If the notice is provided in-person, the individual who does not want private and confidential information shared among the one-stop partners must immediately advise the one-stop partner representative of that decision. The notice must be provided to an individual who applies for services telephonically, electronically, or by mail, in a suitable format and within a reasonable time after applying for services, which shall be no later than ten working days from the department's receipt of the application for services. A one-stop representative must be available to answer specific questions regarding the nature, extent, and purpose for which the information may be shared.

(12) To facilitate improved operation and evaluation of state programs, the commissioner may enter into data-sharing contracts with other state agencies only to the extent that such transfer is necessary for the efficient operation or evaluation of outcomes for those programs. The transfer of information by contract under this subsection is exempt from subsection (1)(c) of this section.

(13) The misuse or unauthorized release of records or information by any person or organization to which access is permitted by this chapter subjects the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [2011 1st sp.s. c 43 § 466; 2008 c 120 § 6; 2005 c 274 § 322; 2003 c 165 § 3; 2000 c 134 § 2. Prior: 1997 c 409 § 605; 1997 c 58 § 1004; 1996 c 79 § 1; 1993 c 281 § 59; 1981 c 177 § 1; 1979 ex.s. c 177 § 1; 1977 ex.s. c 153 § 6.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Findings—2000 c 134: "The legislature finds that individuals in need of employment and related services would be better served by integrating employment and training services to form a comprehensive network of state and local programs, called a one-stop career development system. Successful integration of employment and training services demands prompt and efficient exchange of information among service providers. The legislature further finds that efficient operation of state programs and their evaluation demand at times information held by the employment security department. Current restrictions on information exchange hamper this coordination, resulting in increased administrative costs, reduced levels of service, and fewer positive outcomes than could otherwise be achieved." [2000 c 134 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 50.16 RCW FUNDS

Sections

50.16.030 Withdrawals from federal unemployment trust fund.

50.16.030 Withdrawals from federal unemployment trust fund. (1)(a) Except as provided in (b) and (c) of this subsection, moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and repayment of loans from the federal government to guarantee solvency of the unemployment compensation fund in accordance with regulations prescribed by the commissioner, except that money credited to this state's account pursuant to section 903 of the social security act, as amended, shall be used exclusively as provided in subsection (5) of this section. The commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as he or she deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his or her warrants for the payment of benefits solely from such benefits account.

(b) During fiscal year 2006, moneys for the payment of regular benefits as defined in RCW 50.22.010 shall be requisitioned in the following order:

(i) First, from the moneys credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended in section 209 of the temporary extended unemployment compensation act of 2002 (42 U.S.C. Sec. 1103(d)), the amount equal to the amount of benefits charged that exceed the contributions paid in the four consecutive calendar quarters ending on June 30, 2006, because the social cost factor contributions that employers are subject to under *RCW 50.29.025(2)(b)(ii)(B) are less than the social cost factor contributions that these employers would have been subject to if *RCW 50.29.025(2)(b)(ii)(A) had applied to these employers; and

(ii) Second, after the requisitioning required under (b)(i) of this subsection, from all other moneys credited to this state's account in the unemployment trust fund.

(c) During fiscal years 2012 and 2013, if moneys are credited to this state's account in the unemployment trust fund pursuant to section 903(f)(3) of the social security act,

as amended in section 2003 of the American recovery and reinvestment act of 2009 (42 U.S.C. Sec. 1103(f)(3)), moneys for the payment of regular benefits as defined in RCW 50.22.010 shall be requisitioned in the following order:

(i) First, from the moneys credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended in section 2003 of the American recovery and reinvestment act of 2009 (42 U.S.C. Sec. 1103(f)), a total amount during the two-year period consisting of fiscal years 2012 and 2013 that is equal to the total amount of temporary benefit increases under RCW 50.20.1202. This subsection shall not be construed as requiring that the total amount be requisitioned in each of these fiscal years; and

(ii) Second, after the requisitioning required under (c)(i) of this subsection, from all other moneys credited to this state's account in the unemployment trust fund.

(2) Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody, and RCW 43.01.050, as amended, shall not apply. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the commissioner, or his or her duly authorized agent for that purpose.

(3) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the commissioner, shall be redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund.

(4) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this title pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July 1st and ending on the next June 30th to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, as amended, during the same twelve-month period and the thirty-four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated pursuant to subsections (4) through (6) of this section and charged against the amounts credited to the account of this state during any of such thirty-five twelve-month periods. For the purposes of subsections (4) through (6) of this section,

amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth twelve-month period preceding such period: PROVIDED, That any amount credited to this state's account under section 903 of the social security act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund shall be excluded from the unemployment compensation fund balance for the purpose of experience rating credit determination.

(5) Money credited to the account of this state pursuant to section 903 of the social security act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses of administration and of public employment offices pursuant to subsections (4) through (6) of this section. However, moneys credited because of excess amounts in federal accounts in federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and are not subject to appropriation by the legislature for any other purpose.

(6) Money requisitioned as provided in subsections (4) through (6) of this section for the payment of expenses of administration shall be deposited in the unemployment compensation fund, but until expended, shall remain a part of the unemployment compensation fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund. [2011 c 4 § 4; 2006 c 13 § 7; 2005 c 133 § 6; 1999 c 36 § 1; 1983 1st ex.s. c 7 § 1; 1973 c 6 § 1; 1969 ex.s. c 201 § 1; 1959 c 170 § 2; 1945 c 35 § 62; Rem. Supp. 1945 § 9998-200. Prior: 1943 c 127 § 6; 1941 c 253 § 7.]

***Reviser's note:** RCW 50.29.025 was amended by 2011 c 4 § 16, 2011 c 3 § 3, 2009 c 3 § 14, and 2009 c 493 § 2, changing the subsection numbering.

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133: See notes following RCW 50.20.120.

Additional employees authorized—2005 c 133: See note following RCW 50.01.010.

Additional notes found at www.leg.wa.gov

Chapter 50.20 RCW BENEFITS AND CLAIMS

Sections

- 50.20.099 Training benefits—Eligibility to work in the United States.
(Effective July 1, 2012.)
- 50.20.120 Amount of benefits.

- 50.20.1202 Additional temporary benefit increase.
 50.20.130 Deduction from weekly benefit amount. (*Effective July 1, 2012.*)
 50.20.190 Recovery of benefit payments.

50.20.099 Training benefits—Eligibility to work in the United States. (*Effective July 1, 2012.*) (1) To ensure that unemployment insurance benefits are paid in accordance with RCW 50.20.098, the employment security department shall verify that an individual is eligible to work in the United States before the individual receives training benefits under RCW 50.22.150 or 50.22.155.

(2) By July 1, 2002, the employment security department shall:

(a) Develop and implement an effective method for determining, where appropriate, eligibility to work in the United States for individuals applying for unemployment benefits under this title;

(b) Review verification systems developed by federal agencies for verifying a person's eligibility to receive unemployment benefits under this title and evaluate the effectiveness of these systems for use in this state; and

(c) Report its initial findings to the legislature by September 1, 2000, and its final report by July 1, 2002.

(3) Where federal law prohibits the conditioning of unemployment benefits on a verification of an individual's status as a qualified or authorized alien, the requirements of this section shall not apply. [2011 c 4 § 7; 2000 c 2 § 10.]

Contingent effective date—2011 c 4 §§ 7-15: "Sections 7 through 15 of this act take effect July 1, 2012, unless the United States department of labor determines by October 1, 2011, that this act does not meet the requirements of section 2003 of the federal American recovery and reinvestment act of 2009 for unemployment insurance modernization incentive funding." [2011 c 4 § 24.] The United States department of labor determined that this act meets the requirements of section 2003 of the federal American recovery and reinvestment act of 2009.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Additional notes found at www.leg.wa.gov

50.20.120 Amount of benefits. Except as provided in RCW 50.20.1201 and 50.20.1202, benefits shall be payable as provided in this section.

(1) For claims with an effective date on or after April 4, 2004, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of twenty-six times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title.

(2) For claims with an effective date on or after April 24, 2005, an individual's weekly benefit amount shall be an amount equal to three and eighty-five one-hundredths percent of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.

(3) The maximum and minimum amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th.

(a) The maximum amount payable weekly shall be either four hundred ninety-six dollars or sixty-three percent of the "average weekly wage" for the calendar year preceding such June 30th, whichever is greater.

(b) The minimum amount payable weekly shall be fifteen percent of the "average weekly wage" for the calendar year preceding such June 30th.

(4) If any weekly benefit, maximum benefit, or minimum benefit amount computed herein is not a multiple of one dollar, it shall be reduced to the next lower multiple of one dollar. [2011 c 4 § 2; 2009 c 3 § 3; 2006 c 13 § 1; 2005 c 133 § 3; 2003 2nd sp.s. c 4 § 11; 2002 c 149 § 4; 1993 c 483 § 12; 1984 c 205 § 1; 1983 1st ex.s. c 23 § 11; 1981 c 35 § 5; 1980 c 74 § 3; 1977 ex.s. c 33 § 7; 1970 ex.s. c 2 § 5; 1959 c 321 § 2; 1955 c 209 § 1; 1951 c 265 § 11; 1949 c 214 § 16; 1945 c 35 § 80; Rem. Supp. 1949 § 9998-218. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Short title—2009 c 3: "This act may be known and cited as the economic security act of 2009." [2009 c 3 § 1.]

Effective date—2009 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 5, 2009." [2009 c 3 § 15.]

Conflict with federal requirements—2009 c 3: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2009 c 3 § 16.]

Part headings not law—2006 c 13: "Part headings used in this act are not any part of the law." [2006 c 13 § 25.]

Severability—2006 c 13: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 13 § 27.]

Conflict with federal requirements—2006 c 13: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2006 c 13 § 28.]

Findings—Intent—2005 c 133: "The legislature finds that the unemployment insurance system was created to set aside unemployment reserves to be used for the benefit of persons who are unemployed through no fault of their own and to maintain purchasing power and limit the social consequences of unemployment. The legislature further finds that the system is falling short of these goals by failing to recognize the importance of applying liberal construction for the purpose of reducing involuntary unemployment, and the suffering caused by it, to the minimum, and by failing to provide equitable benefits to unemployed workers. The legislature also recognizes the desirability of managing the system to take into account the goal of reducing costs to foster a competitive business climate. The legislature intends to adjust the balance between these goals by reinstating the requirement for liberal construction and making other adjustments in the system that will allow reasonable improvements in benefit equity, including reinstating a weekly benefit calculation based on the wages in the two quarters of the claimant's base year in which wages were the highest. The legislature finds that these adjustments are critical to the health and welfare of unemployed workers, and to the purchasing power essential to the economic health and welfare of communities and the state, and should be implemented as soon as feasible." [2005 c 133 § 1.]

Conflict with federal requirements—2005 c 133: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2005 c 133 § 11.]

Effective date—2005 c 133: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 22, 2005]." [2005 c 133 § 12.]

Additional employees authorized—2005 c 133: See note following RCW 50.01.010.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Additional notes found at www.leg.wa.gov

50.20.1202 Additional temporary benefit increase.

(1) Except as provided for in subsection (3) of this section, for claims with an effective date on or after March 6, 2011, and before November 6, 2011, an individual's weekly benefit amount shall be the amount established under RCW 50.20.120 plus an additional temporary benefit increase of twenty-five dollars. The weekly benefit amount under this section:

(a) Is payable for all weeks of regular, extended, emergency, supplemental, or additional benefits on that claim;

(b) Shall increase the maximum benefits payable to the individual under RCW 50.20.120(1) by a corresponding dollar amount; and

(c) Shall increase the maximum amount payable weekly and the minimum amount payable weekly, irrespective of the provisions of RCW 50.20.120(3).

(2) Payment of benefits to individuals whose weekly benefit amounts are increased under this section shall be subject to the same terms and conditions under this title that apply to the payment of benefits to individuals whose benefit amounts are established under RCW 50.20.120.

(3) The department must calculate the total amount of temporary benefit increases paid under subsection (1) of this section.

(a) In calculating the total amount of temporary benefit increases, weeks of emergency unemployment compensation and extended benefits shall not be considered.

(b) Except as provided for in (c) of this subsection, when the total amount of temporary benefit increases for all weeks equals sixty-eight million dollars, the temporary benefit increase under subsection (1) of this section may not be paid for any additional weeks. An individual's maximum benefits payable, maximum amount payable weekly, or the minimum amount payable weekly must be adjusted accordingly.

(c) An individual receiving emergency unemployment compensation or extended benefits under this section shall continue to receive the temporary benefit increase for all weeks of emergency unemployment compensation or extended benefits. [2011 c 4 § 1.]

Effective date—2011 c 4 §§ 1-6 and 16-21: "Sections 1 through 6 and 16 through 21 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its

existing public institutions, and take effect immediately [February 11, 2011]." [2011 c 4 § 26.]

Conflict with federal requirements—2011 c 4: "*If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2011 c 4 § 20.]

*Reviser's note: See 2011 c 4 § 21 (uncodified), following this note.

Conflict with federal requirements—2011 c 4: "In determining under section 20 of this act which if any part of this act is in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in the state for federal unemployment tax credits, the commissioner of the Washington state employment security department shall have full and complete authority and discretion to determine the extent of the conflict and to determine which provisions of this act shall be inoperative and which shall remain in effect in order to remedy the conflict with federal requirements." [2011 c 4 § 21.]

50.20.130 Deduction from weekly benefit amount. (Effective July 1, 2012.)

(1) If an eligible individual is available for work for less than a full week, he or she shall be paid his or her weekly benefit amount reduced by one-seventh of such amount for each day that he or she is unavailable for work: PROVIDED, That if he or she is unavailable for work for three days or more of a week, he or she shall be considered unavailable for the entire week.

(2) Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his or her weekly benefit amount less:

(a) Seventy-five percent of that part of the remuneration (if any) payable to him or her with respect to such week which is in excess of five dollars; or

(b) For any weeks in which the individual is receiving training benefits as provided in RCW 50.22.155(2), half of that part of the remuneration (if any) payable to him or her with respect to such week which is in excess of five dollars.

(3) The benefits in this section, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar. [2011 c 4 § 13; 2010 c 8 § 13022; 1983 1st ex.s. c 23 § 12; 1973 2nd ex.s. c 7 § 3; 1959 c 321 § 3; 1951 c 215 § 15; 1949 c 214 § 17; 1945 c 35 § 81; Rem. Supp. 1949 § 9998-219. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

Contingent effective date—2011 c 4 §§ 7-15: See note following RCW 50.20.099.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Additional notes found at www.leg.wa.gov

50.20.190 Recovery of benefit payments. (1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits,

fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable benefit year for which the purported overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: PROVIDED, HOWEVER, That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days' notice, using a method by which the mailing can be tracked or the delivery can be confirmed, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed within five days of its filing with the clerk to the person(s) mentioned in the warrant using a method by which the mailing can be tracked or the delivery can be confirmed.

(4) On request of any agency which administers an employment security law of another state, the United States,

or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of the individual's monthly payments either partially or in full.

(7) The department shall: (a) Conduct social security number cross-match audits or engage in other more effective activities that ensure that individuals are entitled to all amounts of benefits that they are paid; and (b) engage in other detection and recovery of overpayment and collection activities. [2011 c 301 § 17; 2007 c 327 § 1; 2006 c 13 § 21. Prior: 2005 c 518 § 934; 2003 2nd sp.s. c 4 § 26; 2002 c 371 § 915; 2001 c 146 § 7; 1995 c 90 § 1; 1993 c 483 § 13; 1991 c 117 § 3; 1990 c 245 § 5; 1989 c 92 § 2; 1981 c 35 § 6; 1975 1st ex.s. c 228 § 3; 1973 1st ex.s. c 158 § 7; 1953 ex.s. c 8 § 14; 1951 c 215 § 8; 1947 c 215 § 18; 1945 c 35 § 87; Rem. Supp. 1947 § 9998-225; prior: 1943 c 127 § 12; 1941 c 253 § 13; 1939 c 214 § 14; 1937 c 162 § 16.]

Severability—Conflict with federal requirements—Effective date—2007 c 327: See notes following RCW 50.24.014.

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

Additional notes found at www.leg.wa.gov

Chapter 50.22 RCW

EXTENDED AND ADDITIONAL BENEFITS

Sections

50.22.010	Definitions.
50.22.130	Training benefits program—Intent. <i>(Effective July 1, 2012.)</i>
50.22.140	Employment security department authorized to pay training benefits—Expenditures. <i>(Effective July 1, 2012.)</i>
50.22.155	Training benefits—Claims effective on or after April 5, 2009—Eligibility—Definitions—Role of local workforce development councils—Rules. <i>(Effective until July 1, 2012.)</i>
50.22.155	Training benefits—Claims effective on or after April 5, 2009—Eligibility—Definitions—Role of local workforce development councils—Rules. <i>(Effective July 1, 2012.)</i>
50.22.157	Training benefits program—Annual report—Program review and evaluation. <i>(Effective July 1, 2012.)</i>

50.22.010 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after a week for which there is an "on" indicator; and

(b) Ends with the third week after the first week for which there is an "off" indicator: PROVIDED, That no extended benefit period shall last for a period of less than thirteen consecutive weeks, and further that no extended benefit period may begin by reason of an "on" indicator before the fourteenth week after the close of a prior extended benefit period which was in effect with respect to this state.

(2) There is an "on" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks:

(a) The rate of insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equaled or exceeded five percent; or

(b) For benefits for weeks of unemployment beginning after March 6, 1993:

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (b)(i) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(c) This subsection applies as provided under the tax relief, unemployment insurance reauthorization, and job creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this subsection:

(i) The average rate of insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in all of the preceding three calendar years and equaled or exceeded five percent; or

(ii) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent; and

(iii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (c)(ii) of this subsection, equals or exceeds one hundred ten percent of the average for any of the corresponding three-month periods ending in the three preceding calendar years.

(3) "High unemployment period" means any period of unemployment beginning after March 6, 1993, during which an extended benefit period would be in effect if:

(a) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent; and

(b) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (a) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(c) This subsection applies as provided under the tax relief, unemployment insurance reauthorization, and job creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent date as may be provided by the

department by rule, consistent with the purposes of this subsection.

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (a) of this subsection, equals or exceeds one hundred ten percent of the average for any of the corresponding three-month periods ending in the three preceding calendar years.

(4) There is an "off" indicator for this state for a week only if, for the period consisting of such week and immediately preceding twelve weeks, none of the options specified in subsection (2) or (3) of this section result in an "on" indicator.

(5) "Regular benefits" means benefits payable to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits or additional benefits.

(6) "Extended benefits" means benefits payable for weeks of unemployment beginning in an extended benefit period to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than regular or additional benefits.

(7) "Additional benefits" are benefits totally financed by the state and payable under this title to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(8) "Eligibility period" of an individual means:

(a) The period consisting of the weeks in his or her benefit year which begin in an extended benefit period that is in effect in this state and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period; or

(b) For an individual who is eligible for emergency unemployment compensation during the extended benefit period beginning February 15, 2009, the period consisting of the week ending February 28, 2009, and applies as provided under the tax relief, unemployment insurance reauthorization, and job creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this subsection.

(9) "Additional benefit eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an additional benefit period that is in effect and, if his or her benefit year ends within such additional benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were payable to him or her under this title or any other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-ser-

vicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week; or

(b) Has received, prior to such week, all of the regular benefits that were available to him or her under this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week, after the cancellation of some or all of his or her wage credits or the total or partial reduction of his or her rights to regular benefits: PROVIDED, That, for the purposes of (a) and (b) [of this subsection], an individual shall be deemed to have received in his or her current benefit year all of the regular benefits that were payable to him or her, or available to him or her, as the case may be, even though:

(i) As a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to his or her current benefit year, he or she may subsequently be determined to be entitled to more regular benefits; or

(ii) By reason of the seasonal provisions of another state law, he or she is not entitled to regular benefits with respect to such week of unemployment (although he or she may be entitled to regular benefits with respect to future weeks of unemployment in the next season, as the case may be, in his or her current benefit year), and he or she is otherwise an exhaustee within the meaning of this section with respect to his or her right to regular benefits under such state law seasonal provisions during the season or off season in which that week of unemployment occurs; or

(iii) Having established a benefit year, no regular benefits are payable to him or her during such year because his or her wage credits were canceled or his or her right to regular benefits was totally reduced as the result of the application of a disqualification; or

(c) His or her benefit year having ended prior to such week, he or she has insufficient wages or employment, or both, on the basis of which he or she could establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, he or she is precluded from receiving regular benefits by reason of the provision in RCW 50.04.030 which meets the requirement of section 3304(a)(7) of the Federal Unemployment Tax Act, or the similar provision in any other state law; and

(d)(i) Has no right for such week to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, and such other federal laws as are specified in regulations issued by the United States secretary of labor; and

(ii) Has not received and is not seeking for such week unemployment benefits under the unemployment compensation law of Canada, unless the appropriate agency finally determines that he or she is not entitled to unemployment benefits under such law for such week.

(11) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the internal revenue code of 1954. [2011 c 4 § 5; 2011 c 3 § 1; 2009 c 493 § 4; 1993 c 483 § 15; 1985 ex.s. c 5 § 10; 1983 c 1 § 1; 1982 1st ex.s. c 18 § 2; 1981 c 35 § 7; 1977 ex.s. c 292 § 11; 1973 c 73 § 7; 1971 c 1 § 2.]

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 3: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2011 c 3 § 4.]

Effective date—2011 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 11, 2011]." [2011 c 3 § 6.]

Effective date—2009 c 493 § 4: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2009]." [2009 c 493 § 7.]

Conflict with federal requirements—2009 c 493: See note following RCW 50.29.021.

Additional notes found at www.leg.wa.gov

50.22.130 Training benefits program—Intent. (Effective July 1, 2012.) It is the intent of the legislature that a training benefits program be established to provide unemployment insurance benefits to unemployed individuals who participate in training programs necessary for their reemployment.

The legislature further intends that this program serve the following goals:

- (1) Retraining should be available for those unemployed individuals whose skills are no longer in demand;
- (2) Training must enhance the individual's marketable skills and earning power; and
- (3) Retraining must be targeted to high-demand occupations.

The legislature further intends that funding for this program be limited by a specified maximum amount each fiscal year. [2011 c 4 § 8; 2009 c 353 § 3; 2000 c 2 § 6.]

Contingent effective date—2011 c 4 §§ 7-15: See note following RCW 50.20.099.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Additional notes found at www.leg.wa.gov

50.22.140 Employment security department authorized to pay training benefits—Expenditures. (Effective July 1, 2012.) (1) The employment security department is authorized to pay training benefits under RCW 50.22.150 and 50.22.155, but may not obligate expenditures beyond the limits specified in this section or as otherwise set by the legislature. Any funds not obligated in one fiscal year may be carried forward to the next fiscal year. The commissioner may not obligate more than twenty million dollars annually in addition to any funds carried forward from previous fiscal years.

(2) If the amount available for training benefits at any time is equal to or less than five million dollars, funds will no longer be obligated for individuals in RCW 50.22.155(2)(a)(ii). If funds are exhausted, training benefits

will continue to be obligated to dislocated workers only under RCW 50.22.155(2)(a)(i). The following year's obligation for training benefits will be reduced by a corresponding amount. [2011 c 4 § 10; 2002 c 149 § 1; 2000 2nd sp.s. c 1 § 916; 2000 c 2 § 7.]

Contingent effective date—2011 c 4 §§ 7-15: See note following RCW 50.20.099.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Conflict with federal requirements—2002 c 149: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2002 c 149 § 15.]

Severability—2002 c 149: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 149 § 16.]

Additional notes found at www.leg.wa.gov

50.22.155 Training benefits—Claims effective on or after April 5, 2009—Eligibility—Definitions—Role of local workforce development councils—Rules. (Effective until July 1, 2012.) (1) This section applies to claims with an effective date on or after April 5, 2009.

(2) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits when:

(a) The individual is a dislocated worker as defined in RCW 50.04.075 and, after assessment of the individual's labor market, occupation, or skills, is determined to need job-related training to find suitable employment in the individual's labor market. The assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets and high-demand occupations identified in local labor market areas by the local workforce development councils in cooperation with the employment security department and its labor market information division; or

(b) For claims with an effective date on or after September 7, 2009, the individual:

(i) Earned an average hourly wage in the individual's base year that is less than one hundred thirty percent of the state minimum wage and, after assessment, it is determined that the individual's earning potential will be enhanced through vocational training. The individual's average hourly wage is calculated by dividing the total wages paid by the total hours worked in the individual's base year;

(ii) Served in the United States military or the Washington national guard during the twelve-month period prior to the application date, was honorably discharged from military service or the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market;

(iii) Is currently serving in the Washington national guard and, after assessment, is determined to need job-related

training to find suitable employment in the individual's labor market; or

(iv) Is disabled due to an injury or illness and, after assessment, is determined to be unable to return to his or her previous occupation and to need job-related training to find suitable employment in the individual's labor market.

(3)(a) The individual must develop an individual training program that is submitted to the commissioner for approval within ninety days after the individual is notified by the employment security department of the requirements of this section;

(b) The individual must enter the approved training program by one hundred twenty days after the date of the notification, unless the employment security department determines that the training is not available during the one hundred twenty days, in which case the individual enters training as soon as it is available;

(c) The department may waive the deadlines established under this subsection for reasons deemed by the commissioner to be good cause.

(4) The individual must be enrolled in training approved under this section on a full-time basis as determined by the educational institution, except that less than full-time training may be approved when the individual has a physical, mental, or emotional disability that precludes enrollment on a full-time basis.

(5) The individual must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution.

(6) An individual is not eligible for training benefits under this section if he or she:

(a) Is a standby claimant who expects recall to his or her regular employer; or

(b) Has a definite recall date that is within six months of the date he or she is laid off.

(7) The following definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(b) "High-demand occupation" means an occupation with a substantial number of current or projected employment opportunities.

(c) "Training benefits" means additional benefits paid under this section.

(d) "Training program" means:

(i) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(ii) A vocational training program at an educational institution that:

(A) Is targeted to training for a high-demand occupation;

(B) Is likely to enhance the individual's marketable skills and earning power; and

(C) Meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(8) Benefits shall be paid as follows:

(a) The total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

(b) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits.

(c) Training benefits shall be paid before any extended benefits but not before any similar federally funded program. Effective July 3, 2011, training benefits shall be paid after any federally funded program.

(d) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim. However, training benefits are not payable for weeks more than three years beyond the end of the benefit year of the regular claim when individuals are eligible for benefits in accordance with RCW 50.22.010 (2)(c) or (3)(c).

(9) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(10) Individuals who receive training benefits under RCW 50.22.150 or this section are not eligible for training benefits under this section for five years from the last receipt of training benefits.

(11) An individual eligible to receive a trade readjustment allowance under chapter 2, Title II of the trade act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance.

(12) An individual eligible to receive emergency unemployment compensation under any federal law shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

(13) All base year employers are interested parties to the approval of training and the granting of training benefits.

(14) Each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and high-demand occupations and skill sets. Each local workforce development council shall update this information annually or more frequently if needed.

(15) The commissioner shall adopt rules as necessary to implement this section. [2011 c 4 § 6; 2011 c 3 § 2; 2009 c 3 § 4.]

Reviser's note: This section was amended by 2011 c 3 § 2 and by 2011 c 4 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Contingent expiration date—2011 c 4 §§ 3 and 6: See note following RCW 50.29.021.

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Conflict with federal requirements—Effective date—2011 c 3: See notes following RCW 50.22.010.

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

50.22.155 Training benefits—Claims effective on or after April 5, 2009—Eligibility—Definitions—Role of local workforce development councils—Rules. (Effective July 1, 2012.) (1) With respect to claims with an effective date on or after April 5, 2009, and before July 1, 2012:

(a) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits when:

(i) The individual is a dislocated worker as defined in RCW 50.04.075 and, after assessment of the individual's labor market, occupation, or skills, is determined to need job-related training to find suitable employment in the individual's labor market. The assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets and high-demand occupations identified in local labor market areas by the local workforce development councils in cooperation with the employment security department and its labor market information division; or

(ii) For claims with an effective date on or after September 7, 2009, the individual:

(A) Earned an average hourly wage in the individual's base year that is less than one hundred thirty percent of the state minimum wage and, after assessment, it is determined that the individual's earning potential will be enhanced through vocational training. The individual's average hourly wage is calculated by dividing the total wages paid by the total hours worked in the individual's base year;

(B) Served in the United States military or the Washington national guard during the twelve-month period prior to the application date, was honorably discharged from military service or the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market;

(C) Is currently serving in the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market; or

(D) Is disabled due to an injury or illness and, after assessment, is determined to be unable to return to his or her previous occupation and to need job-related training to find suitable employment in the individual's labor market.

(b)(i) The individual must develop an individual training program that is submitted to the commissioner for approval within ninety days after the individual is notified by the employment security department of the requirements of this section;

(ii) The individual must enter the approved training program by one hundred twenty days after the date of the notifi-

cation, unless the employment security department determines that the training is not available during the one hundred twenty days, in which case the individual enters training as soon as it is available;

(ii) The department may waive the deadlines established under this subsection for reasons deemed by the commissioner to be good cause.

(c) The individual must be enrolled in training approved under this section on a full-time basis as determined by the educational institution, except that less than full-time training may be approved when the individual has a physical, mental, or emotional disability that precludes enrollment on a full-time basis.

(d) The individual must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution.

(e) An individual is not eligible for training benefits under this section if he or she:

(i) Is a standby claimant who expects recall to his or her regular employer; or

(ii) Has a definite recall date that is within six months of the date he or she is laid off.

(f) The following definitions apply throughout this subsection (1) unless the context clearly requires otherwise.

(i) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(ii) "High-demand occupation" means an occupation with a substantial number of current or projected employment opportunities.

(iii) "Training benefits" means additional benefits paid under this section.

(iv) "Training program" means:

(A) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(B) A vocational training program at an educational institution that:

(I) Is targeted to training for a high-demand occupation;

(II) Is likely to enhance the individual's marketable skills and earning power; and

(III) Meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(g) Benefits shall be paid as follows:

(i) The total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

(ii) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits.

(iii) Training benefits shall be paid before any extended benefits but not before any similar federally funded program. Effective July 3, 2011, training benefits shall be paid after any federally funded program.

(iv) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim. However, training benefits are not payable for weeks more than three years beyond the end of the benefit year of the regular claim when individuals are eligible for benefits in accordance with RCW 50.22.010 (2)(c) or (3)(c).

(h) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(i) Individuals who receive training benefits under RCW 50.22.150 or this section are not eligible for training benefits under this section for five years from the last receipt of training benefits.

(j) An individual eligible to receive a trade readjustment allowance under chapter 2, Title II of the trade act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance.

(k) An individual eligible to receive emergency unemployment compensation under any federal law shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

(l) All base year employers are interested parties to the approval of training and the granting of training benefits.

(m) Each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and high-demand occupations and skill sets. Each local workforce development council shall update this information annually or more frequently if needed.

(2) With respect to claims with an effective date on or after July 1, 2012:

(a) Training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits when:

(i) The individual is a dislocated worker as defined in RCW 50.04.075 and, after assessment of the individual's labor market, occupation, or skills, is determined to need job-related training to find suitable employment in the individual's labor market. The assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets and high-demand occupations identified in local labor market areas by the local workforce development councils in cooperation with the employment security department and its labor market information division; or

(ii) Subject to the availability of funds as specified in RCW 50.22.140, the individual:

(A) Earned an average hourly wage in the individual's base year that is less than one hundred thirty percent of the state minimum wage and, after assessment, it is determined that the individual's earning potential will be enhanced

through vocational training. The individual's average hourly wage is calculated by dividing the total wages paid by the total hours worked in the individual's base year;

(B) Served in the United States military or the Washington national guard during the twelve-month period prior to the application date, was honorably discharged from military service or the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market;

(C) Is currently serving in the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market; or

(D) Is disabled due to an injury or illness and, after assessment, is determined to be unable to return to his or her previous occupation and to need job-related training to find suitable employment in the individual's labor market.

(b)(i) Except for an individual eligible under (a)(i) of this subsection, the individual must develop an individual training plan that is submitted to the commissioner for approval within ninety days after the individual is notified by the employment security department of the requirements of this section;

(ii) Except for an individual eligible under (a)(i) of this subsection, the individual must enroll in the approved training program by one hundred twenty days after the date of the notification, unless the employment security department determines that the training is not available during the one hundred twenty days, in which case the individual enters training as soon as it is available;

(iii) An individual eligible under (a)(i) of this subsection must submit an individual training plan and enroll in the approved training program prior to the end of the individual's benefit year;

(iv) The department may waive the deadlines established under (b)(i) and (ii) of this subsection for reasons deemed by the commissioner to be good cause.

(c) Except for an individual eligible under (a)(i) of this subsection, the individual must be enrolled in training approved under this section on a full-time basis as determined by the educational institution, except that less than full-time training may be approved when the individual has a physical, mental, or emotional disability that precludes enrollment on a full-time basis.

(d) The individual must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution.

(e) An individual is not eligible for training benefits under this section if he or she:

(i) Is a standby claimant who expects recall to his or her regular employer; or

(ii) Has a definite recall date that is within six months of the date he or she is laid off.

(f) The following definitions apply throughout this subsection (2) unless the context clearly requires otherwise:

(i) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(ii) "High-demand occupation" means an occupation with a substantial number of current or projected employment opportunities.

(iii) "Training benefits" means additional benefits paid under this section.

(iv) "Training program" means:

(A) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(B) A vocational training program at an educational institution that:

(I) Is targeted to training for a high-demand occupation;

(II) Is likely to enhance the individual's marketable skills and earning power; and

(III) Meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(g) Available benefits shall be paid as follows:

(i) The total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits paid, or deemed paid, with respect to the benefit year.

(ii) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits.

(iii) Training benefits shall be paid after any federally funded program.

(iv) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim. However, training benefits are not payable for weeks more than three years beyond the end of the benefit year of the regular claim when individuals are eligible for benefits in accordance with RCW 50.22.010 (2)(c) or (3)(c).

(h) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(i) Except for individuals eligible under (a)(i) of this subsection, individuals who receive training benefits under RCW 50.22.150 or this section are not eligible for training benefits under this section for five years from the last receipt of training benefits.

(j) An individual eligible to receive a trade readjustment allowance under chapter 2, Title II of the trade act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance.

(k) An individual eligible to receive emergency unemployment compensation under any federal law shall not be

eligible to receive benefits under this section for each week the individual receives such compensation.

(l) All base year employers are interested parties to the approval of training and the granting of training benefits.

(m) Each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and high-demand occupations and skill sets. Each local workforce development council shall update this information annually or more frequently if needed.

(3) The commissioner shall adopt rules as necessary to implement this section. [2011 c 4 § 9; 2011 c 3 § 2; 2009 c 3 § 4.]

Reviser's note: This section was amended by 2011 c 3 § 2 and by 2011 c 4 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Contingent effective date—2011 c 4 §§ 7-15: See note following RCW 50.20.099.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Conflict with federal requirements—Effective date—2011 c 3: See notes following RCW 50.22.010.

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

50.22.157 Training benefits program—Annual report—Program review and evaluation. (Effective July 1, 2012.)

(1) The employment security department shall report to the appropriate committees of the legislature by December 1, 2009, and every year thereafter, on the status of the training benefits program and the resulting outcomes. The report shall include a survey based assessment of the employment outcomes for program participants within the previous three years. The department shall also include in its report:

(a) A demographic analysis of participants in the training benefits program under this section including the number of claimants per North American industry classification system code and the gender, race, age, and geographic representation of participants;

(b) The duration of training benefits claimed per claimant;

(c) An analysis of the training provided to participants including the occupational category supported by the training, whether the training received would lead to employment in a high-demand occupation, whether a degree or certificate is required in that occupational category to obtain employment, those participants who complete training in relationship to those that do not, the number of participants who take courses in basic language, reading, or writing skills to improve their employability, and the reasons for noncompletion of approved training programs;

(d) The employment and wage history of participants, including the pretraining and posttraining wage, the type of work participants were engaged in prior to unemployment, and whether those participating in training return to their previous employer within two years of receiving training, or are employed in a field for which they were retrained;

(e) An identification and analysis of administrative costs at both the local and state level for administering this program;

(f) A projection of program costs for the next fiscal year; and

(g) The total funds obligated for training benefits, and the net balance remaining to be obligated subject to the restrictions of RCW 50.22.140.

(2) The joint legislative audit and review committee is directed to conduct a thorough review and evaluation of the training benefits program on the following schedule:

(a) Three years after the implementation of the training benefits portion of chapter 4, Laws of 2011 and every five years thereafter; and

(b) In any year in which the employment security department is required to suspend obligation of training benefits funds pursuant to RCW 50.22.140(2), or total expenditures exceed twenty-five million dollars.

(3) As part of the review conducted under subsection (2) of this section, the joint legislative audit and review committee shall:

(a) Assess whether the program is complying with legislative intent;

(b) Assess whether the program is effective;

(c) Assess whether the program is operating in an efficient and economical manner which results in optimum performance; and

(d) Make recommendations on how to improve the training benefits program.

(4) After a review of the training benefits program has been completed by the joint legislative audit and review committee, the appropriate committees of the legislature must hold a public hearing on the review and consider potential changes to improve the program. [2011 c 4 § 15; 2009 c 3 § 6.]

Contingent effective date—2011 c 4 §§ 7-15: See note following RCW 50.20.099.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Chapter 50.24 RCW

CONTRIBUTIONS BY EMPLOYERS

Sections

50.24.014	Financing special unemployment assistance—Financing the employment security department's administrative costs—Accounts—Contributions. (<i>Effective July 1, 2012.</i>)
50.24.070	Order and notice of assessment.
50.24.110	Notice and order to withhold and deliver.
50.24.115	Warrant—Authorized—Filing—Lien—Enforcement.

50.24.014 Financing special unemployment assistance—Financing the employment security department's administrative costs—Accounts—Contributions. (*Effective July 1, 2012.*) (1)(a) A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become

payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, at a basic rate of two one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

(b) A separate and identifiable account is established in the administrative contingency fund for financing the employment security department's administrative costs under RCW 50.22.150 and 50.22.155 and the costs under RCW 50.22.150(11) and 50.22.155 (1)(m) and (2)(m). All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, those employers who are required to make payments in lieu of contributions, those employers described under RCW 50.29.025(2)(d), and those qualified employers assigned rate class 20 or rate class 40, as applicable, under RCW 50.29.025, at a basic rate of one one-hundredth of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010. Any amount of contributions payable under this subsection (1)(b) that exceeds the amount that would have been collected at a rate of four one-thousandths of one percent must be deposited in the account created in (a) of this subsection.

(2)(a) Contributions under this section shall become due and be paid by each employer under rules as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

(b) In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) If the commissioner determines that federal funding has been increased to provide financing for the services specified in chapter 50.62 RCW, the commissioner shall direct that collection of contributions under this section be terminated on the following January 1st. [2011 c 4 § 11; 2009 c 566 § 2; 2007 c 327 § 2; 2006 c 13 § 20. Prior: 2003 2nd sp.s. c 4 § 25; 2000 c 2 § 15; prior: 1998 c 346 § 901; 1998 c 161 § 7; 1994 c 187 § 3; 1993 c 483 § 20; 1987 c 171 § 4; 1985 ex.s. c 5 § 8.]

Contingent effective date—2011 c 4 §§ 7-15: See note following RCW 50.20.099.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Findings—Intent—2009 c 566: "(1) The legislature finds that:

(a) This is a time of great economic difficulty for the residents of Washington state;

(b) Education and training provides opportunity for unemployed workers and economically disadvantaged adults to move into living wage jobs and is of critical importance to the current and future prosperity of the residents of Washington state;

(c) Community and technical college workforce training programs, private career schools and colleges, and Washington state apprenticeship and training council-approved apprenticeship programs provide effective and

efficient pathways for people to enter high-demand occupations while also meeting the needs of the economy;

(d) The identification of high-demand occupations needs to be based on reliable labor market research; and

(e) Workforce development councils are in a position to provide funding for economically disadvantaged adults and unemployed workers to access training.

(2) Consistent with the intent of the workforce investment act adult and dislocated worker program provisions of the American recovery and reinvestment act of 2009, the legislature intends that individuals who are eligible for services under the workforce investment act adult and dislocated worker programs, or are receiving or have exhausted entitlement to unemployment compensation benefits be provided the opportunity to enroll in training programs to prepare for a high-demand occupation." [2009 c 566 § 1.]

Effective date—2009 c 566: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 566 § 8.]

Severability—2007 c 327: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 327 § 5.]

Conflict with federal requirements—2007 c 327: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2007 c 327 § 6.]

Effective date—2007 c 327: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 327 § 7.]

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Finding—Intent—1998 c 161: See note following RCW 50.20.140.

Additional notes found at www.leg.wa.gov

50.24.070 Order and notice of assessment. At any time after the commissioner shall find that any contributions, interest, or penalties have become delinquent, the commissioner may issue an order and notice of assessment specifying the amount due, which order and notice of assessment shall be served upon the delinquent employer in the manner prescribed for the service of a summons in a civil action, or using a method by which the mailing can be tracked or the delivery can be confirmed. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax, or any interest or penalties thereon. [2011 c 301 § 18; 1987 c 111 § 4; 1979 ex.s. c 190 § 3; 1945 c 35 § 95; Rem. Supp. 1945 § 9998-233. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

Commencement of actions: Chapter 4.28 RCW.

Additional notes found at www.leg.wa.gov

50.24.110 Notice and order to withhold and deliver. The commissioner is hereby authorized to issue to any person, firm, corporation, political subdivision, or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when the commissioner has reason to

believe that there is in the possession of such person, firm, corporation, political subdivision, or department, property which is due, owing, or belonging to any person, firm, or corporation upon whom the department has served a benefit overpayment assessment or a notice and order of assessment for unemployment compensation contributions, interest, or penalties. The effect of a notice to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability is satisfied or becomes unenforceable because of a lapse of time.

The notice and order to withhold and deliver shall be served by the sheriff or the sheriff's deputy of the county wherein the service is made, using a method by which the mailing can be tracked or the delivery can be confirmed, or by any duly authorized representative of the commissioner. Any person, firm, corporation, political subdivision, or department upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice.

In the event there is in the possession of any such person, firm, corporation, political subdivision, or department, any property which may be subject to the claim of the employment security department of the state, such property shall be delivered forthwith to the commissioner or the commissioner's duly authorized representative upon demand to be held in trust by the commissioner for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the commissioner conditioned upon final determination of liability.

Should any person, firm, or corporation fail to make answer to an order to withhold and deliver within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against such person, firm, or corporation for the full amount claimed by the commissioner in the notice to withhold and deliver, together with costs. [2011 c 301 § 19; 1990 c 245 § 6; 1987 c 111 § 5; 1979 ex.s. c 190 § 7; 1947 c 215 § 20; 1945 c 35 § 99; Rem. Supp. 1947 § 9998-237.]

Additional notes found at www.leg.wa.gov

50.24.115 Warrant—Authorized—Filing—Lien—Enforcement. Whenever any order and notice of assessment or jeopardy assessment shall have become final in accordance with the provisions of this title the commissioner may file with the clerk of any county within the state a warrant in the amount of the notice of assessment plus interest, penalties, and a filing fee under RCW 36.18.012(10). The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of the tax, interest, penalties, and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment

in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant, and charged by the commissioner to the employer or employing unit. A copy of the warrant shall be mailed to the employer or employing unit using a method by which the mailing can be tracked or the delivery can be confirmed within five days of filing with the clerk. [2011 c 301 § 20; 2010 c 8 § 13032; 2001 c 146 § 8; 1983 1st ex.s. c 23 § 16; 1979 ex.s. c 190 § 8; 1975 1st ex.s. c 228 § 15.]

Additional notes found at www.leg.wa.gov

Chapter 50.29 RCW

EMPLOYER EXPERIENCE RATING

Sections

50.29.021	Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004. (<i>Effective until July 1, 2012.</i>)
50.29.021	Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004. (<i>Effective July 1, 2012.</i>)
50.29.025	Contribution rates (<i>as amended by 2011 c 3.</i>)
50.29.025	Contribution rates (<i>as amended by 2011 c 4.</i>)

50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004. (*Effective until July 1, 2012.*) (1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

- (i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or
- (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rat-

ing accounts of employers except those employers described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer. However, when a benefit claim becomes invalid due to an amendment or adjustment of a report where the employer failed to report or inaccurately reported hours worked or remuneration paid, or both, all benefits paid will be charged to the experience rating account of the contribution paying employer or employers that originally filed the incomplete or inaccurate report or reports. An employer who reimburses the trust fund for benefits paid to workers and who fails to report or inaccurately reported hours worked or remuneration paid, or both, shall reimburse the trust fund for all benefits paid that are based on the originally filed incomplete or inaccurate report or reports.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Benefits paid to an individual who qualifies for benefits under RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as applicable, shall not be charged to the experience rating account of any contribution paying employer.

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer. This subsection (3)(f) does not apply to the calculation of contribution rates under RCW 50.29.025 for rate year 2010 and thereafter.

(g) The forty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1201 and the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1202 shall not be charged to the experience rating account of any contribution paying employer.

(h) With respect to claims where the minimum amount payable weekly is increased to one hundred fifty-five dollars pursuant to RCW 50.20.1201(3), benefits paid that exceed the benefits that would have been paid if the minimum amount payable weekly had been calculated pursuant to

RCW 50.20.120 shall not be charged to the experience rating account of any contribution paying employer.

(i) Training benefits paid to an individual under RCW 50.22.155 shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, work-site, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster;

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.06 RCW; or

(v) Was hired to replace an employee who is a member of the military reserves or National Guard and was called to federal active military service by the president of the United States and is subsequently laid off when that employee is reemployed by their employer upon release from active duty within the time provided for reemployment in RCW 73.16.035.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted. [2011 c 4 § 3; 2010 c 25 § 1. Prior: 2009 c 493 § 1; 2009 c 50 § 1; 2009 c 3 § 13; 2008 c 323 § 2; 2007 c 146 § 2; 2006 c 13 § 6; 2005 c 133 § 4; 2003 2nd sp.s. c 4 § 21.]

Contingent expiration date—2011 c 4 §§ 3 and 6: "Sections 3 and 6 of this act expire July 1, 2012, unless the United States department of labor determines by October 1, 2011, that this act does not meet the requirements of section 2003 of the federal American recovery and reinvestment act of 2009 for unemployment insurance modernization incentive funding." [2011 c 4 § 23.] The United States department of labor determined that this act meets the requirements of section 2003 of the federal American recovery and reinvestment act of 2009.

Notice—2011 c 4: "The employment security department must provide notice of the expiration date of sections 3 and 6 of this act and the effective date of sections 7 through 15 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department." [2011 c 4 § 25.] The employment security department provided notice to the office of the code reviser on July 11, 2011. See notes following RCW 50.29.021 and 50.20.099.

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Effective date—2010 c 25 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2010]." [2010 c 25 § 6.]

Conflict with federal requirements—2010 c 25: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2010 c 25 § 4.]

Conflict with federal requirements—2009 c 493: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2009 c 493 § 5.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Conflict with federal requirements—2008 c 323: See note following RCW 50.20.050.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133: See notes following RCW 50.20.120.

Additional employees authorized—2005 c 133: See note following RCW 50.01.010.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004. (Effective July 1, 2012.) (1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer. However, when a benefit claim becomes invalid due to an amendment or adjustment of a report where the employer failed to report or inaccurately reported hours worked or remuneration paid, or both, all benefits paid will be charged to the experience rating account of the contribution paying employer or employers that originally filed the incomplete or inaccurate report or reports. An employer who reimburses the trust fund for benefits paid to workers and who fails to report or inaccurately reported hours worked or remuneration paid, or both, shall reimburse the trust fund for all benefits paid that are based on the originally filed incomplete or inaccurate report or reports.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Benefits paid to an individual who qualifies for benefits under RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as applicable, shall not be charged to the experience rating account of any contribution paying employer.

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer. This subsection (3)(f) does not apply to the calculation of contribution rates under RCW 50.29.025 for rate year 2010 and thereafter.

(g) The forty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1201 and the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW

50.20.1202 shall not be charged to the experience rating account of any contribution paying employer.

(h) With respect to claims where the minimum amount payable weekly is increased to one hundred fifty-five dollars pursuant to RCW 50.20.1201(3), benefits paid that exceed the benefits that would have been paid if the minimum amount payable weekly had been calculated pursuant to RCW 50.20.120 shall not be charged to the experience rating account of any contribution paying employer.

(i) Upon approval of an individual's training benefits plan submitted in accordance with RCW 50.22.155(2), an individual is considered enrolled in training, and regular benefits beginning with the week of approval shall not be charged to the experience rating account of any contribution paying employer.

(j) Training benefits paid to an individual under RCW 50.22.155 shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, work-site, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster;

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.06 RCW; or

(v) Was hired to replace an employee who is a member of the military reserves or National Guard and was called to federal active military service by the president of the United States and is subsequently laid off when that employee is reemployed by their employer upon release from active duty within the time provided for reemployment in RCW 73.16.035.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted. [2011 c 4 § 14; 2010 c 25 § 1. Prior: 2009 c 493 § 1; 2009 c 50 § 1; 2009 c 3 § 13; 2008 c 323 § 2; 2007 c 146 § 2; 2006 c 13 § 6; 2005 c 133 § 4; 2003 2nd sp.s. c 4 § 21.]

Contingent effective date—2011 c 4 §§ 7-15: See note following RCW 50.20.099.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Effective date—2010 c 25 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2010]." [2010 c 25 § 6.]

Conflict with federal requirements—2010 c 25: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2010 c 25 § 4.]

Conflict with federal requirements—2009 c 493: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2009 c 493 § 5.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Conflict with federal requirements—2008 c 323: See note following RCW 50.20.050.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133: See notes following RCW 50.20.120.

Additional employees authorized—2005 c 133: See note following RCW 50.01.010.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.29.025 Contribution rates (as amended by 2011 c 3). (1) For contributions assessed for rate years 2005 through 2009, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio	Rate Class	Rate (percent)
At least	Less than	
	0.000001	1
0.000001	0.001250	2
0.001250	0.002500	3
0.002500	0.003750	4
0.003750	0.005000	5
0.005000	0.006250	6
0.006250	0.007500	7
0.007500	0.008750	8
0.008750	0.010000	9

0.010000	0.011250	10	1.15
0.011250	0.012500	11	1.30
0.012500	0.013750	12	1.45
0.013750	0.015000	13	1.60
0.015000	0.016250	14	1.75
0.016250	0.017500	15	1.90
0.017500	0.018750	16	2.05
0.018750	0.020000	17	2.20
0.020000	0.021250	18	2.35
0.021250	0.022500	19	2.50
0.022500	0.023750	20	2.65
0.023750	0.025000	21	2.80
0.025000	0.026250	22	2.95
0.026250	0.027500	23	3.10
0.027500	0.028750	24	3.25
0.028750	0.030000	25	3.40
0.030000	0.031250	26	3.55
0.031250	0.032500	27	3.70
0.032500	0.033750	28	3.85
0.033750	0.035000	29	4.00
0.035000	0.036250	30	4.15
0.036250	0.037500	31	4.30
0.037500	0.040000	32	4.45
0.040000	0.042500	33	4.60
0.042500	0.045000	34	4.75
0.045000	0.047500	35	4.90
0.047500	0.050000	36	5.05
0.050000	0.052500	37	5.20
0.052500	0.055000	38	5.30
0.055000	0.057500	39	5.35
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) and (C) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (1)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than four-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year.

For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (1)(b) shall be six-tenths of one percent, except that if the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide:

(I) At least twelve months but less than fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent; or

(II) At least fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent, except that, for employers in rate class 1, the minimum shall be forty-five hundredths of one percent.

(ii)(A) Except as provided in (b)(ii)(B) of this subsection, the graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six and five-tenths percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," may not exceed six percent through rate year 2007 and may not exceed five and seven-tenths percent for rate years 2008 and 2009:

- (I) Rate class 1 - 78 percent;
- (II) Rate class 2 - 82 percent;
- (III) Rate class 3 - 86 percent;
- (IV) Rate class 4 - 90 percent;
- (V) Rate class 5 - 94 percent;
- (VI) Rate class 6 - 98 percent;
- (VII) Rate class 7 - 102 percent;
- (VIII) Rate class 8 - 106 percent;
- (IX) Rate class 9 - 110 percent;
- (X) Rate class 10 - 114 percent;
- (XI) Rate class 11 - 118 percent; and
- (XII) Rate classes 12 through 40 - 120 percent.

(B) For contributions assessed beginning July 1, 2005, through December 31, 2007, for employers whose North American industry classification system code is "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," the graduated social cost factor rate is zero.

(iii) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters. To calculate the flat social cost factor for rate year 2005, the commissioner shall calculate the total social cost using the array calculation factor contributions that would have been required to be paid by all employers in the calculation period if (a) of this subsection had been in effect for the relevant period. To calculate the flat social cost factor for rate years 2010 and 2011, the forty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1201 shall not be considered for purposes of calculating the total unemployment benefits paid to claimants in the four consecutive calendar quarters immediately preceding the computation date.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) For employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due:

(i) The array calculation factor rate shall be two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(ii) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(d) For all other employers not qualified to be in the array:

(i) For rate years 2005, 2006, and 2007:

(A) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, plus fifteen percent of that amount; however, the rate may not be less than one percent or more than the array calculation factor rate in rate class 40; and

(B) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, plus fifteen percent of that amount, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(ii) For contributions assessed for rate years 2008 and 2009:

(A) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, multiplied by the history factor, but not less than one percent or more than the array calculation factor rate in rate class 40;

(B) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, multiplied by

the history factor, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection; and

(C) The history factor shall be based on the total amounts of benefits charged and contributions paid in the three fiscal years ending prior to the computation date by employers not qualified to be in the array, other than employers in (c) of this subsection, who were first subject to contributions in the calendar year ending three years prior to the computation date. The commissioner shall calculate the history ratio by dividing the total amount of benefits charged by the total amount of contributions paid in this three-year period by these employers. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five one-hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The commissioner shall determine the history factor according to the history ratio as follows:

	History Ratio	History Factor (percent)
	At least	Less than
(I)		.95
(II)	.95	1.05
(III)	1.05	115

(2) For contributions assessed in rate year 2010 and thereafter, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio	Rate Class	Rate (percent)
At least		
	Less than	
	0.000001	1
0.000001	0.001250	2
0.001250	0.002500	3
0.002500	0.003750	4
0.003750	0.005000	5
0.005000	0.006250	6
0.006250	0.007500	7
0.007500	0.008750	8
0.008750	0.010000	9
0.010000	0.011250	10
0.011250	0.012500	11
0.012500	0.013750	12
0.013750	0.015000	13
0.015000	0.016250	14
0.016250	0.017500	15
0.017500	0.018750	16
0.018750	0.020000	17
0.020000	0.021250	18
0.021250	0.022500	19
0.022500	0.023750	20
0.023750	0.025000	21
0.025000	0.026250	22
0.026250	0.027500	23

0.027500	0.028750	24	2.88
0.028750	0.030000	25	3.00
0.030000	0.031250	26	3.13
0.031250	0.032500	27	3.25
0.032500	0.033750	28	3.38
0.033750	0.035000	29	3.50
0.035000	0.036250	30	3.63
0.036250	0.037500	31	3.75
0.037500	0.040000	32	4.00
0.040000	0.042500	33	4.25
0.042500	0.045000	34	4.50
0.045000	0.047500	35	4.75
0.047500	0.050000	36	5.00
0.050000	0.052500	37	5.15
0.052500	0.055000	38	5.25
0.055000	0.057500	39	5.30
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) and (C) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (2)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than four-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year. For rate year 2011, the calculation may not result in a flat social cost factor that is more than one and twenty-two one-hundredths percent.

For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (2)(b) shall be six-tenths of one percent, except that if the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide:

(I) At least ten months but less than eleven months of unemployment benefits, the minimum shall be five-tenths of one percent; or

(II) At least eleven months but less than twelve months of unemployment benefits, the minimum shall be forty-five hundredths of one percent; or

(III) At least twelve months but less than thirteen months of unemployment benefits, the minimum shall be four-tenths of one percent; or

(IV) At least thirteen months but less than fifteen months of unemployment benefits, the minimum shall be thirty-five hundredths of one percent; or

(V) At least fifteen months but less than seventeen months of unemployment benefits, the minimum shall be twenty-five hundredths of one percent; or

(VI) At least seventeen months but less than eighteen months of unemployment benefits, the minimum shall be fifteen hundredths of one percent; or

(VII) At least eighteen months of unemployment benefits, the minimum shall be fifteen hundredths of one percent through rate year 2011 and shall be zero thereafter.

(ii)(A) Except as provided in (b)(ii)(B) of this subsection, the graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated

social cost factor rate may not exceed six percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," may not exceed five and four-tenths percent:

- ~~((A))~~ (I) Rate class 1 - 78 percent;
- ~~((B))~~ (II) Rate class 2 - 82 percent;
- ~~((C))~~ (III) Rate class 3 - 86 percent;
- ~~((D))~~ (IV) Rate class 4 - 90 percent;
- ~~((E))~~ (V) Rate class 5 - 94 percent;
- ~~((F))~~ (VI) Rate class 6 - 98 percent;
- ~~((G))~~ (VII) Rate class 7 - 102 percent;
- ~~((H))~~ (VIII) Rate class 8 - 106 percent;
- ~~((I))~~ (IX) Rate class 9 - 110 percent;
- ~~((J))~~ (X) Rate class 10 - 114 percent;
- ~~((K))~~ (XI) Rate class 11 - 118 percent; and
- ~~((L))~~ (XII) Rate classes 12 through 40 - 120 percent.

(B) For rate year 2011, the graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," may not exceed five and four-tenths percent:

- (I) Rate class 1 - 40 percent;
- (II) Rate class 2 - 44 percent;
- (III) Rate class 3 - 48 percent;
- (IV) Rate class 4 - 52 percent;
- (V) Rate class 5 - 56 percent;
- (VI) Rate class 6 - 60 percent;
- (VII) Rate class 7 - 64 percent;
- (VIII) Rate class 8 - 68 percent;
- (IX) Rate class 9 - 72 percent;
- (X) Rate class 10 - 76 percent;
- (XI) Rate class 11 - 80 percent;
- (XII) Rate class 12 - 84 percent;
- (XIII) Rate class 13 - 88 percent;
- (XIV) Rate class 14 - 92 percent;
- (XV) Rate class 15 - 96 percent;
- (XVI) Rate class 16 - 100 percent;
- (XVII) Rate class 17 - 104 percent;
- (XVIII) Rate class 18 - 108 percent;
- (XIX) Rate class 19 - 112 percent;
- (XX) Rate class 20 - 116 percent; and
- (XXI) Rate classes 21 through 40 - 120 percent.

(iii) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) For employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due:

(i) For rate years through 2010:

(A) The array calculation factor rate shall be two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(B) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii)(A) of this subsection.

(ii) For rate years 2011 and thereafter:

(A)(I) For an employer who does not enter into an approved agency-deferred payment contract as described in (c)(ii)(A)(II) or (III) of this subsection, the array calculation factor rate shall be the rate it would have been if the employer had not been delinquent in payment plus an additional one percent or, if the employer is delinquent in payment for a second or more consecutive year, an additional two percent;

(II) For an employer who enters an approved agency-deferred payment contract by September 30th of the previous rate year, the array calculation factor rate shall be the rate it would have been if the employer had not been delinquent in payment;

(III) For an employer who enters an approved agency-deferred payment contract after September 30th of the previous rate year, but within thirty days of the date the department sent its first tax rate notice, the array calculation factor rate shall be the rate it would have been had the employer not been delinquent in payment plus an additional one-half of one percent or, if the employer is delinquent in payment for a second or more consecutive year, an additional one and one-half percent;

(IV) For an employer who enters an approved agency-deferred payment contract as described in (c)(ii)(A)(II) or (III) of this subsection, but who fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the array calculation factor rate shall immediately revert to the applicable array calculation factor rate under (c)(ii)(A)(I) of this subsection; and

(B) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 for the relevant year under (b)(ii)(A) or (B) of this subsection.

(d) For all other employers not qualified to be in the array:

(i) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, multiplied by the history factor, but not less than one percent or more than the array calculation factor rate in rate class 40;

(ii) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, multiplied by the history factor, but not more than the social cost factor rate assigned to rate class 40 for the relevant year under (b)(ii)(A) or (B) of this subsection; and

(iii) The history factor shall be based on the total amounts of benefits charged and contributions paid in the three fiscal years ending prior to the computation date by employers not qualified to be in the array, other than employers in (c) of this subsection, who were first subject to contributions in the calendar year ending three years prior to the computation date. The commissioner shall calculate the history ratio by dividing the total amount of benefits charged by the total amount of contributions paid in this three-year period by these employers. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five one-hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The commissioner shall determine the history factor according to the history ratio as follows:

	History Ratio	History Factor (percent)
	At least	Less than
(A)	.95	90
(B)	.95	100
(C)	1.05	115

(3) Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found in the North American industry classification system code. [2011 c 3 § 3; 2010 c 72 § 1. Prior: 2009 c 493 § 2; 2009 c 3 § 14; 2007 c 51 § 1; 2006 c 13 § 4; 2005 c 133 § 5; 2003 2nd sp. s. c 4 § 14; 2003 c 4 § 1; 2000 c 2 § 4; 1995 c 4 § 2; (1995 c 4 § 1 expired January 1, 1998); prior: 1993 c 483 § 21; 1993 c 226 § 14; 1993 c 226 § 13; 1990 c 245 § 7; 1989 c 380 § 79; 1987 c 171 § 3; 1985 ex.s. c 5 § 7; 1984 c 205 § 5.]

Conflict with federal requirements—Effective date—2011 c 3: See notes following RCW 50.22.010.

50.29.025 Contribution rates (as amended by 2011 c 4). (1) For contributions assessed for rate years 2005 through 2009, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

At least	Benefit Ratio	Rate Class	Rate (percent)
	Less than		
	0.000001	1	0.00
0.000001	0.001250	2	0.13
0.001250	0.002500	3	0.25
0.002500	0.003750	4	0.38
0.003750	0.005000	5	0.50
0.005000	0.006250	6	0.63
0.006250	0.007500	7	0.75
0.007500	0.008750	8	0.88
0.008750	0.010000	9	1.00
0.010000	0.011250	10	1.15
0.011250	0.012500	11	1.30
0.012500	0.013750	12	1.45
0.013750	0.015000	13	1.60
0.015000	0.016250	14	1.75
0.016250	0.017500	15	1.90
0.017500	0.018750	16	2.05
0.018750	0.020000	17	2.20
0.020000	0.021250	18	2.35
0.021250	0.022500	19	2.50
0.022500	0.023750	20	2.65
0.023750	0.025000	21	2.80
0.025000	0.026250	22	2.95
0.026250	0.027500	23	3.10
0.027500	0.028750	24	3.25
0.028750	0.030000	25	3.40
0.030000	0.031250	26	3.55
0.031250	0.032500	27	3.70
0.032500	0.033750	28	3.85
0.033750	0.035000	29	4.00
0.035000	0.036250	30	4.15
0.036250	0.037500	31	4.30
0.037500	0.040000	32	4.45
0.040000	0.042500	33	4.60
0.042500	0.045000	34	4.75
0.045000	0.047500	35	4.90
0.047500	0.050000	36	5.05
0.050000	0.052500	37	5.20
0.052500	0.055000	38	5.30
0.055000	0.057500	39	5.35
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) and (C) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten

months and dividing the result by the total taxable payroll. However, the calculation under this subsection (1)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than four-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year.

For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (1)(b) shall be six-tenths of one percent, except that if the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide:

(I) At least twelve months but less than fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent; or

(II) At least fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent, except that, for employers in rate class 1, the minimum shall be forty-five hundredths of one percent.

(ii)(A) Except as provided in (b)(ii)(B) of this subsection, the graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six and five-tenths percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," may not exceed six percent through rate year 2007 and may not exceed five and seven-tenths percent for rate years 2008 and 2009:

- (I) Rate class 1 - 78 percent;
- (II) Rate class 2 - 82 percent;
- (III) Rate class 3 - 86 percent;
- (IV) Rate class 4 - 90 percent;
- (V) Rate class 5 - 94 percent;
- (VI) Rate class 6 - 98 percent;
- (VII) Rate class 7 - 102 percent;
- (VIII) Rate class 8 - 106 percent;
- (IX) Rate class 9 - 110 percent;
- (X) Rate class 10 - 114 percent;
- (XI) Rate class 11 - 118 percent; and
- (XII) Rate classes 12 through 40 - 120 percent.

(B) For contributions assessed beginning July 1, 2005, through December 31, 2007, for employers whose North American industry classification system code is "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," the graduated social cost factor rate is zero.

(iii) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters. To calculate the flat social cost factor for rate year 2005, the commissioner shall calculate the total social cost using the array calculation factor contributions that would have been required to be paid by all employers in the calculation period if (a) of this subsection had been in effect for the relevant period. To calculate the flat social cost factor for rate years 2010 and 2011, the forty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1201 shall not be considered for purposes of calculating the total unemployment benefits paid to claimants in the four consecutive calendar quarters immediately preceding the computation date.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) For employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due:

(i) The array calculation factor rate shall be two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(ii) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(d) For all other employers not qualified to be in the array:

(i) For rate years 2005, 2006, and 2007:

(A) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, plus fifteen percent of that amount; however, the rate may not be less than one percent or more than the array calculation factor rate in rate class 40; and

(B) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, plus fifteen percent of that amount, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(ii) For contributions assessed for rate years 2008 and 2009:

(A) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, multiplied by the history factor, but not less than one percent or more than the array calculation factor rate in rate class 40;

(B) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, multiplied by the history factor, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection; and

(C) The history factor shall be based on the total amounts of benefits charged and contributions paid in the three fiscal years ending prior to the computation date by employers not qualified to be in the array, other than employers in (c) of this subsection, who were first subject to contributions in the calendar year ending three years prior to the computation date. The commissioner shall calculate the history ratio by dividing the total amount of benefits charged by the total amount of contributions paid in this three-year period by these employers. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five one-hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The commissioner shall determine the history factor according to the history ratio as follows:

	History Ratio		History Factor (percent)
	At least	Less than	
(I)		.95	90
(II)	.95	1.05	100
(III)	1.05		115

(2) For contributions assessed in rate year 2010 and thereafter, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio	Rate Class	Rate (percent)
	1	0.00
0.000001	2	0.11
0.001250	3	0.22
0.002500	4	0.33
0.003750	5	0.43
0.005000	6	0.54
0.006250	7	0.65
0.007500	8	0.76
0.008750	9	0.88
0.010000	10	1.01

0.011250	0.012500	11	1.14
0.012500	0.013750	12	1.28
0.013750	0.015000	13	1.41
0.015000	0.016250	14	1.54
0.016250	0.017500	15	1.67
0.017500	0.018750	16	1.80
0.018750	0.020000	17	1.94
0.020000	0.021250	18	2.07
0.021250	0.022500	19	2.20
0.022500	0.023750	20	2.38
0.023750	0.025000	21	2.50
0.025000	0.026250	22	2.63
0.026250	0.027500	23	2.75
0.027500	0.028750	24	2.88
0.028750	0.030000	25	3.00
0.030000	0.031250	26	3.13
0.031250	0.032500	27	3.25
0.032500	0.033750	28	3.38
0.033750	0.035000	29	3.50
0.035000	0.036250	30	3.63
0.036250	0.037500	31	3.75
0.037500	0.040000	32	4.00
0.040000	0.042500	33	4.25
0.042500	0.045000	34	4.50
0.045000	0.047500	35	4.75
0.047500	0.050000	36	5.00
0.050000	0.052500	37	5.15
0.052500	0.055000	38	5.25
0.055000	0.057500	39	5.30
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) and (C) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B)(I) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (2)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than four-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year. For rate year 2011 and thereafter, the calculation may not result in a flat social cost factor that is more than one and twenty-two one-hundredths percent.

(II) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide ten months of unemployment benefits or less, the flat social cost factor for the rate year immediately following the cut-off date may not increase by more than fifty percent over the previous rate year or may not exceed one and twenty-two one-hundredths percent, whichever is greater.

(III) For the purposes of this subsection (2)(b), the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer. The twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1202 shall not be considered in calculating the benefit cost rate when determining the

number of months of unemployment benefits in the unemployment compensation fund.

(C) The minimum flat social cost factor calculated under this subsection (2)(b) shall be six-tenths of one percent, except that if the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide:

(I) At least ten months but less than eleven months of unemployment benefits, the minimum shall be five-tenths of one percent; or

(II) At least eleven months but less than twelve months of unemployment benefits, the minimum shall be forty-five hundredths of one percent; or

(III) At least twelve months but less than thirteen months of unemployment benefits, the minimum shall be four-tenths of one percent; or

(IV) At least thirteen months but less than fifteen months of unemployment benefits, the minimum shall be thirty-five hundredths of one percent; or

(V) At least fifteen months but less than seventeen months of unemployment benefits, the minimum shall be twenty-five hundredths of one percent; or

(VI) At least seventeen months but less than eighteen months of unemployment benefits, the minimum shall be fifteen hundredths of one percent; or

(VII) At least eighteen months of unemployment benefits, the minimum shall be fifteen hundredths of one percent through rate year 2011 and shall be zero thereafter.

(ii)(A) For rate years through 2010, the graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," may not exceed five and four-tenths percent:

~~((A))~~ (I) Rate class 1 - 78 percent;

~~((B))~~ (II) Rate class 2 - 82 percent;

~~((C))~~ (III) Rate class 3 - 86 percent;

~~((D))~~ (IV) Rate class 4 - 90 percent;

~~((E))~~ (V) Rate class 5 - 94 percent;

~~((F))~~ (VI) Rate class 6 - 98 percent;

~~((G))~~ (VII) Rate class 7 - 102 percent;

~~((H))~~ (VIII) Rate class 8 - 106 percent;

~~((I))~~ (IX) Rate class 9 - 110 percent;

~~((J))~~ (X) Rate class 10 - 114 percent;

~~((K))~~ (XI) Rate class 11 - 118 percent; and

~~((L))~~ (XII) Rate classes 12 through 40 - 120 percent.

(B) For rate years 2011 and thereafter, the graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," may not exceed five and four-tenths percent:

(I) Rate class 1 - 40 percent;

(II) Rate class 2 - 44 percent;

(III) Rate class 3 - 48 percent;

(IV) Rate class 4 - 52 percent;

(V) Rate class 5 - 56 percent;

(VI) Rate class 6 - 60 percent;

(VII) Rate class 7 - 64 percent;

(VIII) Rate class 8 - 68 percent;

(IX) Rate class 9 - 72 percent;

(X) Rate class 10 - 76 percent;

(XI) Rate class 11 - 80 percent;

(XII) Rate class 12 - 84 percent;

(XIII) Rate class 13 - 88 percent;

(XIV) Rate class 14 - 92 percent;

(XV) Rate class 15 - 96 percent;

(XVI) Rate class 16 - 100 percent;

(XVII) Rate class 17 - 104 percent;

(XVIII) Rate class 18 - 108 percent;

(XIX) Rate class 19 - 112 percent;

(XX) Rate class 20 - 116 percent; and

(XXI) Rate classes 21 through 40 - 120 percent.

(iii) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters. To calculate the flat social cost factor for rate years 2012 and 2013, the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1202 shall not be considered for purposes of calculating the total unemployment benefits paid to claimants in the four consecutive calendar quarters immediately preceding the computation date.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) For employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due:

(i) For rate years through 2010:

(A) The array calculation factor rate shall be two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(B) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii)(A) of this subsection.

(ii) For rate years 2011 and thereafter:

(A)(I) For an employer who does not enter into an approved agency-deferred payment contract as described in (c)(ii)(A)(II) or (III) of this subsection, the array calculation factor rate shall be the rate it would have been if the employer had not been delinquent in payment plus an additional one percent or, if the employer is delinquent in payment for a second or more consecutive year, an additional two percent;

(II) For an employer who enters an approved agency-deferred payment contract by September 30th of the previous rate year, the array calculation factor rate shall be the rate it would have been if the employer had not been delinquent in payment;

(III) For an employer who enters an approved agency-deferred payment contract after September 30th of the previous rate year, but within thirty days of the date the department sent its first tax rate notice, the array calculation factor rate shall be the rate it would have been had the employer not been delinquent in payment plus an additional one-half of one percent or, if the employer is delinquent in payment for a second or more consecutive year, an additional one and one-half percent;

(IV) For an employer who enters an approved agency-deferred payment contract as described in (c)(ii)(A)(II) or (III) of this subsection, but who fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the array calculation factor rate shall immediately revert to the applicable array calculation factor rate under (c)(ii)(A)(I) of this subsection; and

(B) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii)(B) of this subsection.

(d) For all other employers not qualified to be in the array:

(i) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, multiplied by the history factor, but not less than one percent or more than the array calculation factor rate in rate class 40;

(ii) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, multiplied by the history factor, but not more than the social cost factor rate assigned to rate class 40 for the relevant year under (b)(ii)(A) or (B) of this subsection; and

(iii) The history factor shall be based on the total amounts of benefits charged and contributions paid in the three fiscal years ending prior to the computation date by employers not qualified to be in the array, other than employers in (c) of this subsection, who were first subject to contributions in the calendar year ending three years prior to the computation date. The commissioner shall calculate the history ratio by dividing the total amount of benefits charged by the total amount of contributions paid in this three-year period by these employers. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five one-hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The commissioner shall determine the history factor according to the history ratio as follows:

	History Ratio		History Factor (percent)
	At least	Less than	
(A)		.95	90
(B)	.95	1.05	100
(C)	1.05		115

(3) Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found in the North American industry classification system code. [2011 c 4 § 16; 2010 c 72 § 1. Prior: 2009 c 493 § 2; 2009 c 3 § 14; 2007 c 51 § 1; 2006 c 13 § 4; 2005 c 133 § 5; 2003 2nd sp.s. c 4 § 14; 2003 c 4 § 1; 2000 c 2 § 4; 1995 c 4 § 2; (1995 c 4 § 1 expired January 1, 1998); prior: 1993 c 483 § 21; 1993 c 226 § 14; 1993 c 226 § 13; 1990 c 245 § 7; 1989 c 380 § 79; 1987 c 171 § 3; 1985 ex.s. c 5 § 7; 1984 c 205 § 5.]

Reviser's note: RCW 50.29.025 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Conflict with federal requirements—2010 c 72: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2010 c 72 § 3.]

Conflict with federal requirements—2009 c 493: See note following RCW 50.29.021.

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Conflict with federal requirements—2007 c 51: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2007 c 51 § 2.]

Severability—2007 c 51: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 51 § 3.]

Application—2007 c 51: "This act applies for rate years beginning on or after January 1, 2008." [2007 c 51 § 4.]

Application—2006 c 13 §§ 4 and 5: "Sections 4 and 5 of this act apply to rate years beginning on or after January 1, 2007." [2006 c 13 § 26.]

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133: See notes following RCW 50.20.120.

Additional employees authorized—2005 c 133: See note following RCW 50.01.010.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2003 c 4 § 1: "Section 1 of this act applies to rate years beginning on or after January 1, 2003." [2003 c 4 § 2.]

Effective date—2003 c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2003]." [2003 c 4 § 3.]

Additional notes found at www.leg.wa.gov

Chapter 50.36 RCW PENALTIES

Sections

- 50.36.010 Violations generally.
50.36.020 Violations by employers.

50.36.010 Violations generally. (1) It shall be unlawful for any person to knowingly give any false information or withhold any material information required under the provisions of this title.

(2) Any person who violates any of the provisions of this title which violation is declared to be unlawful, and for which no contrary provision is made, is guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days.

(3) Any person who in connection with any compromise or offer of compromise willfully conceals from any officer or employee of the state any property belonging to an employing unit which is liable for contributions, interest, or penalties, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement relating to the financial condition of the employing unit which is liable for contributions, is guilty of a gross misdemeanor and shall upon conviction thereof be fined not more than five thousand dollars or be imprisoned for up to three hundred sixty-four days, or both.

(4) The penalty prescribed in this section shall not be deemed exclusive, but any act which shall constitute a crime under any law of this state may be the basis of prosecution under such law notwithstanding that it may also be the basis for prosecution under this section. [2011 c 96 § 43; 2003 c 53 § 279; 1953 ex.s. c 8 § 22; 1945 c 35 § 180; Rem. Supp. 1945 § 9998-319. Prior: 1943 c 127 § 12; 1941 c 253 § 13.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

50.36.020 Violations by employers. (1) Any person required under this title to collect, account for and pay over any contributions imposed by this title, who willfully fails to collect or truthfully account for and pay over such contributions, and any person who willfully attempts in any manner to evade or defeat any contributions imposed by this title or the payment thereof, is guilty of a gross misdemeanor and shall, in addition to other penalties provided by law, upon conviction thereof, be fined not more than five thousand dollars, or imprisoned for up to three hundred sixty-four days, or both, together with the costs of prosecution.

(2) The term "person" as used in this section includes an officer or individual in the employment of a corporation, or a member or individual in the employment of a partnership, who as such officer, individual or member is under a duty to perform the act in respect of which the violation occurs. A corporation may likewise be prosecuted under this section and may be subjected to fine and payment of costs of prosecution as prescribed herein for a person. [2011 c 96 § 44; 2003 c 53 § 280; 1953 ex.s. c 8 § 23; 1945 c 35 § 181; Rem.

Supp. 1945 § 9998-320. Prior: 1943 c 127 § 12; 1941 c 253 § 13.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

Crimes and punishment: Titles 9, 9A RCW.

Chapter 50.38 RCW LABOR MARKET INFORMATION AND ECONOMIC ANALYSIS

Sections

- 50.38.015 Definitions. (*Effective January 1, 2012.*)

50.38.015 Definitions. (*Effective January 1, 2012.*)

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

(1) "Labor market information" means the body of information generated from measurement and evaluation of the socioeconomic factors and variables influencing the employment process in the state and specific labor market areas. These socioeconomic factors and variables affect labor demand and supply relationships and include:

(a) Labor force information, which includes but is not limited to employment, unemployment, labor force participation, labor turnover and mobility, average hours and earnings, and changes and characteristics of the population and labor force within specific labor market areas and the state;

(b) Occupational information, which includes but is not limited to occupational supply and demand estimates and projections, characteristics of occupations, wage levels, job duties, training and education requirements, conditions of employment, unionization, retirement practices, and training opportunities;

(c) Economic information, which includes but is not limited to number of business starts and stops by industry and labor market area, information on employment growth and decline by industry and labor market area, employer establishment data, and number of labor-management disputes by industry and labor market area; and

(d) Program information, which includes but is not limited to program participant or student information gathered in cooperation with other state and local agencies along with related labor market information to evaluate the effectiveness, efficiency, and impact of state and local employment, training, education, and job creation efforts in support of planning, management, implementation, and evaluation.

(2) "Labor market area" means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such areas shall be identified in accordance with criteria used by the bureau of labor statistics of the department of labor in defining such areas or similar criteria established by the governor. The area generally takes the name of its community. The boundaries depend primarily on economic and geographic factors. Washington state is divided into labor market areas, which usually include a county or a group of contiguous counties.

(3) "Labor market analysis" means the measurement and evaluation of economic forces as they relate to the employment process in the local labor market area. Variables affecting labor market relationships include, but are not limited to, such factors as labor force changes and characteristics, population changes and characteristics, industrial structure and development, technological developments, shifts in consumer demand, volume and extent of unionization and trade disputes, recruitment practices, wage levels, conditions of employment, and training opportunities.

(4) "Public records" has the same meaning as set forth in RCW 42.56.010.

(5) "Department" means the employment security department. [2011 c 60 § 46; 1993 c 62 § 2.]

Effective date—2011 c 60: See RCW 42.17A.919.

Chapter 50.40 RCW

MISCELLANEOUS PROVISIONS

Sections

50.40.071 Accessible communities account—Creation.

50.40.071 Accessible communities account—Creation. (1) The accessible communities account is created in the custody of the state treasurer. One hundred dollars of the assessment imposed under RCW 46.19.050 (2), (3), and (4) must be deposited into the account. Any reduction in the penalty or fine and assessment imposed under section 6, chapter 215, Laws of 2010 shall be applied proportionally between the penalty or fine and the assessment.

(2) The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Only the commissioner may authorize expenditures from the account.

(3) Expenditures from the account may be used for promoting greater awareness of disability issues and improved access for and inclusion and acceptance of persons with disabilities in communities in the state of Washington, including:

(a) Reimbursing travel, per diem, and reasonable accommodation for county accessible community advisory committee meetings and committee sponsored activities including, but not limited to, supporting the involvement of people with disabilities and disability organizations in emergency planning and emergency preparedness activities;

(b) Establishing and maintaining an accessible communities web site;

(c) Providing training or technical assistance for county accessible community advisory committees;

(d) A grant program for funding proposals developed and submitted by county accessible community advisory committees to promote greater awareness of disability issues and acceptance, inclusion, and access for persons with disabilities within the community;

(e) Reimbursing the state agency that provides administrative support to the governor's committee on disability issues and employment for costs associated with implementing chapter 215, Laws of 2010; and

(f) Programming changes to the judicial information system accounting module required for disbursement of funds to this account. [2011 c 171 § 105; 2010 c 215 § 2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—2010 c 215: "The legislature finds that when people who have disabilities are welcomed and included as members of our communities and provided with equal access to the opportunities available to others, their participation enriches those communities, enhances the strength of those communities' diversity, and contributes toward the economic vitality of those communities. The legislature further finds that more than nine hundred thousand Washington state residents with disabilities continue to face barriers to full participation that could be easily eliminated." [2010 c 215 § 1.]

Title 51

INDUSTRIAL INSURANCE

Chapters

51.04 General provisions.

51.12 Employments and occupations covered.

51.16 Assessment and collection of premiums—Payrolls and records.

51.18 Retrospective rating plan.

51.24 Actions at law for injury or death.

51.32 Compensation—Right to and amount.

51.36 Medical aid.

51.44 Funds.

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Chapter 51.04 RCW

GENERAL PROVISIONS

Sections

51.04.030 Medical aid—Rules—Maximum fees—Records and bill payment.

51.04.062 Findings.

51.04.063 Injured worker options—Claim resolution structured settlement agreements.

51.04.065 Claim resolution structured settlement agreements—Availability of copies.

51.04.069 Claim resolution structured settlement agreements—Reports and studies.

51.04.082 Notices and orders—Mail, personal service, or electronic means.

51.04.110 Workers' compensation advisory committee.

51.04.1101 Performance audit of workers' compensation claims management system. (*Expires December 31, 2015.*)

51.04.153 Fraud—Underground economy—Finding—Use of best practices.

51.04.030 Medical aid—Rules—Maximum fees—Records and bill payment. (1) The director shall supervise the providing of prompt and efficient care and treatment, including care provided by physician assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician, including chiropractic care, and including care provided by licensed advanced registered nurse practitioners, to workers injured during the course of their employment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and adopt and supervise the administration of printed forms, rules, regula-

tions, and practices for the furnishing of such care and treatment: PROVIDED, That the medical coverage decisions of the department do not constitute a "rule" as used in RCW 34.05.010(16), nor are such decisions subject to the rule-making provisions of chapter 34.05 RCW except that criteria for establishing medical coverage decisions shall be adopted by rule after consultation with the workers' compensation advisory committee established in RCW 51.04.110: PROVIDED FURTHER, That the department may recommend to an injured worker particular health care services and providers where specialized treatment is indicated or where cost effective payment levels or rates are obtained by the department: AND PROVIDED FURTHER, That the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as state-wide access to quality service is maintained for injured workers.

(2) The director shall, in consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, hospital, druggist, licensed advanced registered nurse practitioner, physicians' assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to injured workers. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title, including services provided to injured workers, whether aliens or other injured workers, who are not residing in the United States at the time of receiving the services, shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule and its associated billing or payment instructions and policies constitute a "rule" as used in RCW 34.05.010(16).

(3) The director or self-insurer, as the case may be, shall make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured workers, shall approve and pay those which conform to the adopted rules, regulations, established fee schedules, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules, regulations, or the established fee schedules and rules and regulations adopted under it. [2011 c 290 § 1; 2004 c 65 § 1; 1998 c 230 § 1; 1997 c 325 § 2; 1994 c 164 § 25. Prior: 1993 c 515 § 1; 1993 c 159 § 1; 1989 c 189 § 1; 1986 c 200 § 8; 1980 c 14 § 1; prior: 1977 ex.s. c 350 § 2; 1977 ex.s. c 239 § 1; 1971 ex.s. c 289 § 74; 1961 c 23 § 51.04.030; prior: (i) 1917 c 28 § 6; RRS § 7715. (ii) 1919 c 129 § 3; 1917 c 29 § 7; RRS § 7716. (iii) 1923 c 136 § 10; RRS § 7719.]

Report to legislature—2004 c 65: "By December 1, 2006, the department of labor and industries shall report to the senate committee on commerce and trade and the house committee on commerce and labor, or successor committees, on the implementation of this act, including but not limited

to the effects of this act on injured worker outcomes, claim costs, and disputed claims." [2004 c 65 § 17.]

Effective date—2004 c 65: "This act takes effect July 1, 2004." [2004 c 65 § 18.]

Severability—2004 c 65: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 65 § 20.]

51.04.062 Findings. The legislature finds that Washington state's workers' compensation system should be designed to focus on achieving the best outcomes for injured workers. Further, the legislature recognizes that controlling pension costs is key to a financially sound workers' compensation system for employers and workers. To these ends, the legislature recognizes that certain workers would benefit from an option that allows them to initiate claim resolution structured settlements in order to pursue work or retirement goals independent of the system, provided that sufficient protections for injured workers are included. [2011 1st sp.s. c 37 § 301.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

51.04.063 Injured worker options—Claim resolution structured settlement agreements. (1) Notwithstanding RCW 51.04.060 or any other provision of this title, beginning on January 1, 2012, an injured worker who is at least fifty-five years of age on or after January 1, 2012, fifty-three years of age on or after January 1, 2015, or fifty years of age on or after January 1, 2016, may choose from the following: (a) To continue to receive all benefits for which they are eligible under this title, (b) to participate in vocational training if eligible, or (c) to initiate and agree to a resolution of their claim with a structured settlement.

(2)(a) As provided in this section, the parties to an allowed claim may initiate and agree to resolve a claim with a structured settlement for all benefits other than medical. Parties as defined in (b) of this subsection may only initiate claim resolution structured settlements if at least one hundred eighty days have passed since the claim was received by the department or self-insurer and the order allowing the claim is final and binding. All requirements of this title regarding entitlement to and payment of benefits will apply during this period. All claim resolution structured settlement agreements must be approved by the board of industrial insurance appeals.

(b) For purposes of this section, "parties" means:

(i) For a state fund claim, the worker, the employer, and the department. The employer will not be a party if the costs of the claim or claims are no longer included in the calculation of the employer's experience factor used to determine premiums, if they cannot be located, are no longer in business, or they fail to respond or decline to participate after timely notice of the claim resolution settlement process provided by the board and the department.

(ii) For a self-insured claim, the worker and the employer.

(c) The claim resolution structured settlement agreements shall:

(i) Bind the parties with regard to all aspects of a claim except medical benefits unless revoked by one of the parties as provided in subsection (6) of this section;

(ii) Provide a periodic payment schedule to the worker equal to at least twenty-five percent but not more than one hundred fifty percent of the average monthly wage in the state pursuant to RCW 51.08.018, except for the initial payment which may be up to six times the average monthly wage in the state pursuant to RCW 51.08.018;

(iii) Not set aside or reverse an allowance order;

(iv) Not subject any employer who is not a signatory to the agreement to any responsibility or burden under any claim; and

(v) Not subject any funds covered under this title to any responsibility or burden without prior approval from the director or designee.

(d) For state fund claims, the department shall negotiate the claim resolution structured settlement agreement with the worker or their representative and with the employer or employers and their representative or representatives.

(e) For self-insured claims, the self-insured employer shall negotiate the agreement with the worker or their representative. Workers of self-insured employers who are unrepresented may request that the office of the ombudsman for self-insured injured workers provide assistance or be present during negotiations.

(f) Terms of the agreement may include the parties' agreement that the claim shall remain open for future necessary medical or surgical treatment related to the injury where there is a reasonable expectation such treatment is necessary. The parties may also agree that specific future treatment shall be provided without the application required in RCW 51.32.160.

(g) Any claim resolution structured settlement agreement entered into under this section must be in writing and signed by the parties or their representatives and must clearly state that the parties understand and agree to the terms of the agreement.

(h) If a worker is not represented by an attorney at the time of signing a claim resolution structured settlement agreement, the parties must forward a copy of the signed agreement to the board with a request for a conference with an industrial appeals judge. The industrial appeals judge must schedule a conference with all parties within fourteen days for the purpose of (i) reviewing the terms of the proposed settlement agreement by the parties; and (ii) ensuring the worker has an understanding of the benefits generally available under this title and that a claim resolution structured settlement agreement may alter the benefits payable on the claim or claims. The judge may schedule the initial conference for a later date with the consent of the parties.

(i) Before approving the agreement, the industrial appeals judge shall ensure the worker has an adequate understanding of the agreement and its consequences to the worker.

(j) The industrial appeals judge may approve a claim resolution structured settlement agreement only if the judge finds that the agreement is in the best interest of the worker. When determining whether the agreement is in the best interest of the worker, the industrial appeals judge shall consider

the following factors, taken as a whole, with no individual factor being determinative:

(i) The nature and extent of the injuries and disabilities of the worker;

(ii) The age and life expectancy of the injured worker;

(iii) Other benefits the injured worker is receiving or is entitled to receive and the effect a claim resolution structured settlement agreement might have on those benefits; and

(iv) The marital or domestic partnership status of the injured worker.

(k) Within seven days after the conference, the industrial appeals judge shall issue an order allowing or rejecting the claim resolution structured settlement agreement. There is no appeal from the industrial appeals judge's decision.

(l) If the industrial appeals judge issues an order allowing the claim resolution structured settlement agreement, the order must be submitted to the board.

(3) Upon receiving the agreement, the board shall approve it within thirty working days of receipt unless it finds that:

(a) The parties have not entered into the agreement knowingly and willingly;

(b) The agreement does not meet the requirements of a claim resolution structured settlement agreement;

(c) The agreement is the result of a material misrepresentation of law or fact;

(d) The agreement is the result of harassment or coercion; or

(e) The agreement is unreasonable as a matter of law.

(4) If a worker is represented by an attorney at the time of signing a claim resolution structured settlement agreement, the parties shall submit the agreement directly to the board without the conference described in this section.

(5) If the board approves the agreement, it shall provide notice to all parties. The department shall place the agreement in the applicable claim file or files.

(6) A party may revoke consent to the claim resolution structured settlement agreement by providing written notice to the other parties and the board within thirty days after the date the agreement is approved by the board.

(7) To the extent the worker is entitled to any benefits while a claim resolution structured settlement agreement is being negotiated or during the revocation period of an agreement, the benefits must be paid pursuant to the requirements of this title until the agreement becomes final.

(8) A claim resolution structured settlement agreement that meets the conditions in this section and that has become final and binding as provided in this section is binding on all parties to the agreement as to its terms and the injuries and occupational diseases to which the agreement applies. A claim resolution structured settlement agreement that has become final and binding is not subject to appeal.

(9) All payments made to a worker pursuant to a final claim resolution structured settlement agreement must be reported to the department as claims costs pursuant to this title. If a self-insured employer contracts with a third-party administrator for claim services and the payment of benefits under this title, the third-party administrator shall also disburse the structured settlement payments pursuant to the agreement.

(10) Claims closed pursuant to a claim resolution structured settlement agreement can be reopened pursuant to RCW 51.32.160 for medical treatment only. Further temporary total, temporary partial, permanent partial, or permanent total benefits are not payable under the same claim or claims for which a claim resolution structured settlement agreement has been approved by the board and has become final.

(11) Parties aggrieved by the failure of any other party to comply with the terms of a claim resolution structured settlement agreement have one year from the date of failure to comply to petition to the board. If the board determines that a party has failed to comply with an agreement, they will order compliance and will impose a penalty payable to the aggrieved party of up to twenty-five percent of the monetary amount unpaid at the time the petition for noncompliance was filed. The board will also decide on any disputes as to attorneys' fees for services related to claim resolution structured settlement agreements.

(12) Parties and their representatives may not use settlement offers or the claim resolution structured settlement agreement process to harass or coerce any party. If the department determines that an employer has engaged in a pattern of harassment or coercion, the employer may be subject to penalty or corrective action, and may be removed from the retrospective rating program or be decertified from self-insurance under RCW 51.14.030. [2011 1st sp.s. c 37 § 302.]

Rules—2011 1st sp.s. c 37 §§ 302 and 303: "The department of labor and industries and the board of industrial insurance appeals shall adopt rules as necessary to implement sections 302 and 303 of this act." [2011 1st sp.s. c 37 § 305.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

51.04.065 Claim resolution structured settlement agreements—Availability of copies. The department must maintain copies of all claim resolution structured settlement agreements entered into between the parties and furnish copies of such agreements to any party actively negotiating a subsequent claim resolution structured settlement agreement with the worker on any allowed claim when requested. An employer may not consider a prior agreement when making a decision about hiring or the terms or conditions of employment. [2011 1st sp.s. c 37 § 303.]

Rules—2011 1st sp.s. c 37 §§ 302 and 303: See note following RCW 51.04.063.

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

51.04.069 Claim resolution structured settlement agreements—Reports and studies. On December 1, 2011, and annually thereafter through December 1, 2014, the department shall report annually to the appropriate committees of the legislature on the implementation of claim resolution structured settlement agreements. In calendar years 2015, 2019, and 2023, the department shall contract for an independent study of claim resolution structured settlement agreements approved by the board under this section. The study must be performed by a researcher with experience in workers' compensation issues. When selecting the independent researcher, the department shall consult with the workers' compensation advisory committee. The study must eval-

uate the quality and effectiveness of structured settlement agreements of state fund and self-insured claims, provide information on the impact of these agreements to the state fund and to self-insured employers, and evaluate the outcomes of workers who have resolved their claims through the claim resolution structured settlement agreement process. The study must be submitted to the appropriate committees of the legislature. [2011 1st sp.s. c 37 § 306.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

51.04.082 Notices and orders—Mail, personal service, or electronic means. Any notice or order required by this title to be mailed to any employer may be served in the manner prescribed by law for personal service of summons and complaint in the commencement of actions in the superior courts of the state, but if the notice or order is mailed, it shall be addressed to the address of the employer as shown by the records of the department, or, if no such address is shown, to such address as the department is able to ascertain by reasonable effort. If requested by the employer, any notice or order may be sent by secure electronic means except orders communicating the closure of a claim. Correspondence and notices sent electronically are considered received on the date sent by the department. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax or any increases or penalties thereon. [2011 c 290 § 2; 1986 c 9 § 2.]

51.04.110 Workers' compensation advisory committee. The director shall appoint a workers' compensation advisory committee composed of ten members: Three representing subject workers, three representing subject employers, one representing self-insurers, one representing workers of self-insurers, and two ex officio members, without a vote, one of whom shall be the chair of the board of industrial appeals and the other the representative of the department. The member representing the department shall be chair. This committee shall conduct a continuing study of any aspects of workers' compensation as the committee shall determine require their consideration and shall assist in the identification of priorities for safety and health investment projects as provided in chapter 49.17 RCW. The committee shall report its findings to the department or the board of industrial insurance appeals for such action as deemed appropriate. The members of the committee shall be appointed for a term of three years commencing on July 1, 1971 and the terms of the members representing the workers and employers shall be staggered so that the director shall designate one member from each such group initially appointed whose term shall expire on June 30, 1972 and one member from each such group whose term shall expire on June 30, 1973. The members shall serve without compensation, but shall be entitled to travel expenses as provided in RCW 43.03.050 and 43.03.060. The committee may hire such experts, if any, as it shall require to discharge its duties, and may utilize such personnel and facilities of the department and board of industrial insurance appeals as it shall need without charge. All expenses of this committee shall be paid by the department. [2011 1st sp.s. c 37 § 502; 2010 c 8 § 14001; 1982 c 109 § 2; 1980 c 14 § 3. Prior: 1977 ex.s. c 350 § 7; 1977 c 75 § 78;

1975-'76 2nd ex.s. c 34 § 150; 1975 ex.s. c 224 § 1; 1972 ex.s. c 43 § 37; 1971 ex.s. c 289 § 67.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Managed care pilot projects: RCW 43.72.860.

Additional notes found at www.leg.wa.gov

51.04.1101 Performance audit of workers' compensation claims management system. (Expires December 31, 2015.) (1) The joint legislative audit and review committee, in consultation with the department of labor and industries and the workers' compensation advisory committee, shall conduct a performance audit of the workers' compensation claims management system, including self-insured claims. The joint legislative audit and review committee may contract with an independent expert in workers' compensation claims management to assist with the audit.

(2) The audit shall:

(a) Evaluate the extent to which the department: (i) Makes fair and timely decisions, and resolves complaints and disputes in a timely, fair, and effective manner; and (ii) communicates with employers and workers in a timely, responsive, and accurate manner, including communication about review and appeal rights, and including the use of plain language and sufficient opportunities for face-to-face meetings;

(b) Determine if current claims management organization and service delivery models are the most efficient available; analyze organization and delivery for retrospective rating plan participants as compared to nonparticipants to identify differences and how those differences influence retrospective rating plan refunds; and determine whether current initiatives improve service delivery, meet the needs of current and future workers and employers, improve public education and outreach, and are otherwise measurable; and

(c) Make recommendations regarding administrative changes that should be made to improve efficiency while maintaining high levels of quality service to help address system costs, and any needed legislative changes to implement the recommendations.

(3) The joint legislative audit and review committee shall submit progress reports by December 1, 2012, and December 1, 2013, and the results of the audit by June 30, 2015, to the appropriate committees of the legislature.

(4) This section expires December 31, 2015. [2011 1st sp.s. c 37 § 801.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

51.04.153 Fraud—Underground economy—Finding—Use of best practices. (1) The legislature finds that the department is successfully addressing employer fraud and the underground economy, helping ensure that employers who appropriately report and pay premiums can be competitive. Efforts focus on prevention, education, and enforcement by identifying industries for targeted audits, informing industry members and providing the opportunity for voluntary compliance, and ultimately identifying employers for audit based on proven criteria.

(2) To ensure the appropriate use of workers' compensation funds, the legislature directs the department of labor and industries to continue applying these proven best practices to

employer fraud and to apply the same best practices to address instances of worker and provider fraud, including but not limited to:

(a) Participating in a national information exchange with other workers' compensation insurers to avoid duplication of claims and benefits;

(b) Increasing public awareness of employer, worker, and provider fraud issues and how to report suspected fraud;

(c) Establishing criteria for the periodic review of total permanent disability pension recipients including their level of disability and physical activity to determine whether they can be gainfully employed; and

(d) Identifying provider billing patterns to target potentially abusive practices.

(3) The provisions of RCW 51.28.070 shall not be a barrier to the department's participation in a national information exchange as required in subsection (2)(a) of this section.

(4) The department's activities must include approaches to prevent, educate, and ensure compliance by providers, employers, and workers. The department shall provide a report to the governor and the appropriate legislative committees by December 1, 2012, that describes the agency's efforts and outcomes and makes recommendations for statutory changes to address barriers for successfully addressing provider, employer, and worker fraud. [2011 1st sp.s. c 37 § 701.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Chapter 51.12 RCW

EMPLOYMENTS AND OCCUPATIONS COVERED

Sections

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| 51.12.180 | For hire vehicle businesses and operators—Findings—Declaration. (<i>Effective January 1, 2012.</i>) |
| 51.12.183 | For hire vehicle businesses and operators—Mandatory coverage—Definitions. (<i>Effective January 1, 2012.</i>) |
| 51.12.185 | For hire vehicle owners—Retrospective rating program. (<i>Effective January 1, 2012.</i>) |

51.12.180 For hire vehicle businesses and operators—Findings—Declaration. (Effective January 1, 2012.) The legislature finds that taxicab, limousine, and other for hire vehicle operators are at significant risk of injury due to work-related accidents or crimes such as robbery that may not be covered by standard vehicle insurance policies. Since almost all taxicab, limousine, and other for hire vehicle business operations are independent small business franchises, their owners or operators may opt out of industrial insurance coverage without full consideration for the risk of financial exposure to themselves or to their businesses. As a result, health care may be provided to them at public expense or not at all, and erroneous claims may be made by health care providers for insurance coverage, against the state department of labor and industries, private businesses, or the taxicab associations in which certain municipalities require participation. Most for hire vehicle operators do not enjoy the benefit of the broad public policy embodied in this title that mandates industrial insurance protection for workers. The legislature therefore declares that all taxicab, limousine, for hire vehicle businesses, and for hire vehicle operators are

subject to mandatory industrial insurance coverage under this title. [2011 c 190 § 1.]

Effective date—2011 c 190: "Except for section 3 of this act, this act takes effect January 1, 2012." [2011 c 190 § 9.]

51.12.183 For hire vehicle businesses and operators—Mandatory coverage—Definitions. (*Effective January 1, 2012.*) (1) Any business that owns and operates a for hire vehicle licensed under chapter 46.72 RCW, a limousine under chapter 46.72A RCW, or a taxicab under chapter 81.72 RCW and the for hire operator or chauffeur of such vehicle is within the mandatory coverage of this title.

(2) Any business that as owner or agent leases a for hire vehicle licensed under chapter 46.72 RCW, a limousine under chapter 46.72A RCW, or a taxicab under chapter 81.72 RCW to a for hire operator or a chauffeur and the for hire operator or chauffeur of such vehicle is within the mandatory coverage of this title.

(3) For the purposes of this section, the following definitions apply unless the context clearly requires otherwise:

(a) "Chauffeur" has the same meaning as provided in RCW 46.04.115; and

(b) "For hire operator" means a person who is operating a vehicle for the purpose of carrying persons for compensation. [2011 c 190 § 2.]

Effective date—2011 c 190: See note following RCW 51.12.180.

51.12.185 For hire vehicle owners—Retrospective rating program. (*Effective January 1, 2012.*) (1) In order to assist the department with controlling costs related to the self-monitoring of industrial insurance claims by independent owner-operated for hire vehicle, limousine, and taxicab businesses, the department may appoint a panel of individuals with for hire vehicle, limousine, or taxicab transportation industry experience and expertise to advise the department.

(2) The owner of any for hire, limousine, or taxicab vehicle subject to mandatory industrial insurance pursuant to RCW 51.12.183 is eligible for inclusion in a retrospective rating program authorized and established pursuant to chapter 51.18 RCW. [2011 c 190 § 4.]

Effective date—2011 c 190: See note following RCW 51.12.180.

Chapter 51.16 RCW

ASSESSMENT AND COLLECTION OF PREMIUMS—PAYROLLS AND RECORDS

Sections

- 51.16.105 Departmental expenses, financing, accounting.
51.16.240 For hire vehicle businesses and operators—Basis for premiums—Rules.

51.16.105 Departmental expenses, financing, accounting. (1) All department expenses relating to industrial safety and health services of the department pertaining to workers' compensation shall be paid by the department and financed by premiums and by assessments collected from a self-insurer as provided in this title.

(2) The department shall include in all rate notices sent to state fund and self-insured employers an accounting that clearly identifies all programs and services that are financed in whole or in part by state fund premiums or self-insurers'

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administrative assessments. [2011 c 175 § 1; 1994 c 164 § 26; 1977 ex.s. c 350 § 27; 1973 1st ex.s. c 52 § 8; 1971 ex.s. c 289 § 86; 1961 c 23 § 51.16.105. Prior: 1953 c 218 § 2.]

Additional notes found at www.leg.wa.gov

51.16.240 For hire vehicle businesses and operators—Basis for premiums—Rules. (1) For the purposes of RCW 51.12.183:

(a) By no later than January 1, 2012, the department must determine by rule the basis for industrial insurance premiums for: (i) Any business that owns and operates for hire, limousine, or taxicab vehicles; and (ii) any business that owns and leases for hire, limousine, or taxicab vehicles to a business operating such vehicle; and

(b) Not more than ninety days after the department has determined the basis for industrial insurance premiums by rule under (a) of this subsection, the department must assess such premiums on: (i) Any business that owns and operates for hire, limousine, or taxicab vehicles; and (ii) any business that owns and leases for hire, limousine, or taxicab vehicles to a business operating such vehicle.

(2) In determining the basis under this section, the department must consider:

(a) The unique economic structures of the taxicab, for hire vehicle, and limousine industries;

(b) The difficulty of equitably assessing industrial insurance premiums on classes of businesses that utilize both employer/employee and independent contractor business models;

(c) The economic impact on businesses of a rate and assessment alternative, such as a flat rate and assessment levied on a per vehicle or a miles driven basis, compared to that of an assessment based on hours worked;

(d) The department's costs and efficiency of administration;

(e) The cost to businesses and covered workers; and

(f) Anticipated effectiveness in implementing mandatory industrial insurance coverage of for hire vehicle operators as provided in RCW 51.12.183. [2011 c 190 § 3.]

Chapter 51.18 RCW

RETROSPECTIVE RATING PLAN

Sections

- 51.18.065 Direct primary care services—Payment by employer—Rules.

51.18.065 Direct primary care services—Payment by employer—Rules. Payment by an employer for direct primary care services as defined in RCW 48.150.010 when used for medical services on an allowed industrial injury or occupational disease claim does not disqualify: (1) The employer from participating in a retrospective rating plan; (2) any related group sponsor from promoting a retrospective rating plan; or (3) any related plan administrator from administering a retrospective rating plan, provided the employer or group sponsor or plan administrator provides any medical cost or payment information that may be required by the department. Prior to the first retrospective rating adjustment for the plan year beginning January 1, 2012, the department shall determine the information needed and any changes to the retro-

spective rating premium and claim cost calculations to maintain appropriate and equitable retrospective rating refunds when employers pay for direct primary care services. These changes shall apply beginning with the January 1, 2012, plan year.

The department may adopt rules to implement this section. [2011 c 290 § 3.]

Chapter 51.24 RCW

ACTIONS AT LAW FOR INJURY OR DEATH

Sections

51.24.060 Distribution of amount recovered—Lien.

51.24.060 Distribution of amount recovered—Lien.

(1) If the injured worker or beneficiary elects to seek damages from the third person, any recovery made shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid proportionately by the injured worker or beneficiary and the department and/or self-insurer: PROVIDED, That the department and/or self-insurer may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the award: PROVIDED, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department and/or self-insurer for benefits paid;

(i) The department and/or self-insurer shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the worker or beneficiary to the extent of the benefits paid under this title: PROVIDED, That the department's and/or self-insurer's proportionate share shall not exceed one hundred percent of the costs and reasonable attorneys' fees;

(ii) The department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees shall be determined by dividing the gross recovery amount into the benefits paid amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary;

(iii) The department's and/or self-insurer's reimbursement share shall be determined by subtracting their proportionate share of the costs and reasonable attorneys' fees from the benefits paid amount;

(d) Any remaining balance shall be paid to the injured worker or beneficiary; and

(e) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance minus the department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees in regards to the remaining balance. This proportionate share shall be determined by dividing the gross recovery amount

into the remaining balance amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(2) The recovery made shall be subject to a lien by the department and/or self-insurer for its share under this section.

(3) The department or self-insurer has sole discretion to compromise the amount of its lien. In deciding whether or to what extent to compromise its lien, the department or self-insurer shall consider at least the following:

(a) The likelihood of collection of the award or settlement as may be affected by insurance coverage, solvency, or other factors relating to the third person;

(b) Factual and legal issues of liability as between the injured worker or beneficiary and the third person. Such issues include but are not limited to possible contributory negligence and novel theories of liability; and

(c) Problems of proof faced in obtaining the award or settlement.

(4) In an action under this section, the self-insurer may act on behalf and for the benefit of the department to the extent of any compensation and benefits paid or payable from state funds.

(5) It shall be the duty of the person to whom any recovery is paid before distribution under this section to advise the department or self-insurer of the fact and amount of such recovery, the costs and reasonable attorneys' fees associated with the recovery, and to distribute the recovery in compliance with this section.

(6) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by a method for which receipt can be confirmed or tracked, and shall be subject to chapter 51.52 RCW. In the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such worker or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the injured worker or beneficiary against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant

shall be mailed to the injured worker or beneficiary within three days of filing with the clerk.

(7) The director, or the director’s designee, may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice and order to withhold and deliver property of any kind if he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property which is due, owing, or belonging to any worker or beneficiary upon whom a warrant has been served by the department for payments due to the state fund. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff’s deputy; by a method for which receipt can be confirmed or tracked; or by any authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director’s authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount claimed by the director in the notice together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled. [2011 c 290 § 4; 2001 c 146 § 9; 1995 c 199 § 4; 1993 c 496 § 2; 1987 c 442 § 1118; 1986 c 305 § 403; 1984 c 218 § 5; 1983 c 211 § 2; 1977 ex.s. c 85 § 4.]

Additional notes found at www.leg.wa.gov

Chapter 51.32 RCW

COMPENSATION—RIGHT TO AND AMOUNT

Sections

- 51.32.072 Additional payments for prior pensioners—Children—Remarriage—Attendant.
- 51.32.075 Adjustments in compensation or death benefits.
- 51.32.080 Permanent partial disability—Specified—Unspecified, rules for classification—Injury after permanent partial disability.
- 51.32.090 Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations—Finding—Rules.
- 51.32.095 Vocational rehabilitation services—Benefits—Priorities—Allowable costs—Performance criteria. (*Expires June 30, 2013.*)
- 51.32.099 Vocational rehabilitation pilot program—Vocational plans. (*Expires June 30, 2013.*)
- 51.32.240 Erroneous payments—Payments induced by willful misrepresentation—Adjustment for self-insurer’s failure to pay benefits—Recoupment of overpayments by self-insurer—Penalty—Appeal—Enforcement of orders.

51.32.072 Additional payments for prior pensioners—Children—Remarriage—Attendant. (1) Notwithstanding any other provision of law, every surviving spouse and every permanently totally disabled worker or temporarily totally disabled worker, if such worker was unmarried at the time of the worker’s injury or was then married but the marriage was later terminated by judicial action, receiving a pension or compensation for temporary total disability under this title pursuant to compensation schedules in effect prior to July 1, 1971, shall after July 1, 1975, through June 30, 2011, be paid fifty percent of the average monthly wage in the state as computed under RCW 51.08.018 per month and an amount equal to five percent of such average monthly wage per month to such totally disabled worker if married at the time of the worker’s injury and the marriage was not later terminated by judicial action, and an additional two percent of such average monthly wage for each child of such totally disabled worker at the time of injury in the legal custody of such totally disabled worker or such surviving spouse up to a maximum of five such children. The monthly payments such surviving spouse or totally disabled worker are receiving pursuant to compensation schedules in effect prior to July 1, 1971 shall be deducted from the monthly payments above specified.

Where such a surviving spouse has remarried, or where any such child of such worker, whether living or deceased, is not in the legal custody of such worker or such surviving spouse there shall be paid for the benefit of and on account of each such child a sum equal to two percent of such average monthly wage up to a maximum of five such children in addition to any payments theretofore paid under compensation schedules in effect prior to July 1, 1971 for the benefit of and on account of each such child. In the case of any child or children of a deceased worker not leaving a surviving spouse or where the surviving spouse has later died, there shall be paid for the benefit of and on account of each such child a sum equal to two percent of such average monthly wage up to a maximum of five such children in addition to any payments theretofore paid under such schedules for the benefit of and on account of each such child.

If the character of the injury or occupational disease is such as to render the worker so physically helpless as to require the hiring of the services of an attendant, the department shall make monthly payments to such attendant for such services as long as such requirement continues but such payments shall not obtain or be operative while the worker is receiving care under or pursuant to the provisions of this title except for care granted at the discretion of the supervisor pursuant to RCW 51.36.010: PROVIDED, That such payments shall not be considered compensation nor shall they be subject to any limitation upon total compensation payments.

No part of such additional payments shall be payable from the accident fund.

The director shall pay monthly from the supplemental pension fund such an amount as will, when added to the compensation theretofore paid under compensation schedules in effect prior to July 1, 1971, equal the amounts hereinabove specified.

In cases where money has been or shall be advanced to any such person from the pension reserve, the additional amount to be paid under this section shall be reduced by the

amount of monthly pension which was or is predicated upon such advanced portion of the pension reserve.

(2) In addition to the adjustment under subsection (1) of this section, further adjustments shall be made beginning July 1, 2012, and on each July 1st thereafter. The adjustment shall be the percentage change in the average monthly wage in the state under RCW 51.08.018 for the preceding calendar year, rounded to the nearest whole cent.

(3) Compensation due for July 1, 2011, through June 30, 2012, must be paid based on the average monthly wage in the state as computed under RCW 51.08.018 on July 1, 2010. [2011 1st sp.s. c 37 § 201; 1987 c 185 § 34; 1975 1st ex.s. c 224 § 12.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Additional notes found at www.leg.wa.gov

51.32.075 Adjustments in compensation or death benefits. The compensation or death benefits payable pursuant to the provisions of this chapter for temporary total disability, permanent total disability, or death arising out of injuries or occupational diseases shall be adjusted as follows:

(1) On July 1, 1982, there shall be an adjustment for those whose right to compensation was established on or after July 1, 1971, and before July 1, 1982. The adjustment shall be determined by multiplying the amount of compensation to which they are entitled by a fraction, the denominator of which shall be the average monthly wage in the state under RCW 51.08.018 for the fiscal year in which such person's right to compensation was established, and the numerator of which shall be the average monthly wage in the state under RCW 51.08.018 on July 1, 1982.

(2) In addition to the adjustment established by subsection (1) of this section, there shall be another adjustment on July 1, 1983, for those whose right to compensation was established on or after July 1, 1971, and before July 1983, which shall be determined by multiplying the amount of compensation to which they are entitled by a fraction, the denominator of which shall be the average monthly wage in the state under RCW 51.08.018 for the fiscal year in which such person's right to compensation was established, and the numerator of which shall be the average monthly wage in the state under RCW 51.08.018 on July 1, 1983.

(3) In addition to the adjustments under subsections (1) and (2) of this section, further adjustments shall be made beginning on July 1, 1984, and on each July 1st thereafter through July 1, 2010, for those whose right to compensation was established on or after July 1, 1971. The adjustment shall be determined by multiplying the amount of compensation to which they are entitled by a fraction, the denominator of which shall be the average monthly wage in the state under RCW 51.08.018 for the fiscal year in which such person's right to compensation was established, and the numerator of which shall be the average monthly wage in the state under RCW 51.08.018 on July 1st of the year in which the adjustment is being made. The department or self-insurer shall adjust the resulting compensation rate to the nearest whole cent, not to exceed the average monthly wage in the state as computed under RCW 51.08.018.

(4) In addition to the adjustments under subsections (1), (2), and (3) of this section, further adjustments shall be made beginning July 1, 2012, and on each July 1st thereafter for those whose right to compensation was established on or after July 1, 1971. The adjustment shall be the percentage change in the average monthly wage in the state under RCW 51.08.018 for the preceding calendar year, rounded to the nearest whole cent. For claims whose right to compensation was established on or after July 1, 2011, no adjustment shall be made under this subsection until the second July 1st following the date of injury or occupational disease manifestation. [2011 1st sp.s. c 37 § 202; 1988 c 161 § 7; 1983 c 203 § 1; 1982 1st ex.s. c 20 § 1; 1979 c 108 § 1; 1977 ex.s. c 202 § 2; 1975 1st ex.s. c 286 § 2.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Additional notes found at www.leg.wa.gov

51.32.080 Permanent partial disability—Specified—Unspecified, rules for classification—Injury after permanent partial disability. (1)(a) Until July 1, 1993, for the permanent partial disabilities here specifically described, the injured worker shall receive compensation as follows:

LOSS BY AMPUTATION	
Of leg above the knee joint with short thigh stump (3" or less below the tuberosity of ischium)	\$54,000.00
Of leg at or above knee joint with functional stump	48,600.00
Of leg below knee joint	43,200.00
Of leg at ankle (Syme)	37,800.00
Of foot at mid-metatarsals	18,900.00
Of great toe with resection of metatarsal bone	11,340.00
Of great toe at metatarsophalangeal joint	6,804.00
Of great toe at interphalangeal joint	3,600.00
Of lesser toe (2nd to 5th) with resection of metatarsal bone	4,140.00
Of lesser toe at metatarsophalangeal joint	2,016.00
Of lesser toe at proximal interphalangeal joint	1,494.00
Of lesser toe at distal interphalangeal joint	378.00
Of arm at or above the deltoid insertion or by disarticulation at the shoulder	54,000.00
Of arm at any point from below the deltoid insertion to below the elbow joint at the insertion of the biceps tendon	51,300.00
Of arm at any point from below the elbow joint distal to the insertion of the biceps tendon to and including mid-metacarpal amputation of the hand	48,600.00
Of all fingers except the thumb at metacarpophalangeal joints	29,160.00
Of thumb at metacarpophalangeal joint or with resection of carpometacarpal bone	19,440.00

Of thumb at interphalangeal joint	9,720.00
Of index finger at metacarpophalangeal joint or with resection of metacarpal bone	12,150.00
Of index finger at proximal interphalangeal joint	9,720.00
Of index finger at distal interphalangeal joint	5,346.00
Of middle finger at metacarpophalangeal joint or with resection of metacarpal bone	9,720.00
Of middle finger at proximal interphalangeal joint	7,776.00
Of middle finger at distal interphalangeal joint	4,374.00
Of ring finger at metacarpophalangeal joint or with resection of metacarpal bone	4,860.00
Of ring finger at proximal interphalangeal joint	3,888.00
Of ring finger at distal interphalangeal joint	2,430.00
Of little finger at metacarpophalangeal joint or with resection of metacarpal bone	2,430.00
Of little finger at proximal interphalangeal joint	1,944.00
Of little finger at distal interphalangeal joint	972.00

MISCELLANEOUS

Loss of one eye by enucleation	21,600.00
Loss of central visual acuity in one eye	18,000.00
Complete loss of hearing in both ears	43,200.00
Complete loss of hearing in one ear	7,200.00

(b) Beginning on July 1, 1993, compensation under this subsection shall be computed as follows:

(i) Beginning on July 1, 1993, the compensation amounts for the specified disabilities listed in (a) of this subsection shall be increased by thirty-two percent; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the compensation amounts for the specified disabilities listed in (a) of this subsection, as adjusted under (b)(i) of this subsection, shall be readjusted to reflect the percentage change in the consumer price index, calculated as follows: The index for the calendar year preceding the year in which the July calculation is made, to be known as "calendar year A," is divided by the index for the calendar year preceding calendar year A, and the resulting ratio is multiplied by the compensation amount in effect on June 30 immediately preceding the July 1st on which the respective calculation is made. For the purposes of this subsection, "index" means the same as the definition in RCW 2.12.037(1).

(2) Compensation for amputation of a member or part thereof at a site other than those specified in subsection (1) of this section, and for loss of central visual acuity and loss of hearing other than complete, shall be in proportion to that which such other amputation or partial loss of visual acuity or hearing most closely resembles and approximates. Compensation shall be calculated based on the adjusted schedule of

compensation in effect for the respective time period as prescribed in subsection (1) of this section.

(3)(a) Compensation for any other permanent partial disability not involving amputation shall be in the proportion which the extent of such other disability, called unspecified disability, shall bear to the disabilities specified in subsection (1) of this section, which most closely resembles and approximates in degree of disability such other disability, and compensation for any other unspecified permanent partial disability shall be in an amount as measured and compared to total bodily impairment. To reduce litigation and establish more certainty and uniformity in the rating of unspecified permanent partial disabilities, the department shall enact rules having the force of law classifying such disabilities in the proportion which the department shall determine such disabilities reasonably bear to total bodily impairment. In enacting such rules, the department shall give consideration to, but need not necessarily adopt, any nationally recognized medical standards or guides for determining various bodily impairments.

(b) Until July 1, 1993, for purposes of calculating monetary benefits under (a) of this subsection, the amount payable for total bodily impairment shall be deemed to be ninety thousand dollars. Beginning on July 1, 1993, for purposes of calculating monetary benefits under (a) of this subsection, the amount payable for total bodily impairment shall be adjusted as follows:

(i) Beginning on July 1, 1993, the amount payable for total bodily impairment under this section shall be increased to one hundred eighteen thousand eight hundred dollars; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the amount payable for total bodily impairment prescribed in (b)(i) of this subsection shall be adjusted as provided in subsection (1)(b)(ii) of this section.

(c) Until July 1, 1993, the total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed the sum of ninety thousand dollars. Beginning on July 1, 1993, total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed a sum calculated as follows:

(i) Beginning on July 1, 1993, the sum shall be increased to one hundred eighteen thousand eight hundred dollars; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the sum prescribed in (b)(i) of this subsection shall be adjusted as provided in subsection (1)(b)(ii) of this section.

(4) If permanent partial disability compensation is followed by permanent total disability compensation, all permanent partial disability compensation paid to the worker under the claim or claims for which total permanent disability compensation is awarded shall be, at the choosing of the injured worker, either: (a) Deducted from the worker's monthly pension benefits until the total award or awards paid are recovered; or (b) deducted from the pension reserve of such injured worker and his or her monthly compensation payments shall be reduced accordingly. Any interest paid on any permanent partial disability compensation may not be deducted from the pension benefits or pension reserve. The provisions of this subsection apply to all permanent total disability determinations issued on or after July 1, 2011.

(5) Should a worker receive an injury to a member or part of his or her body already, from whatever cause, permanently partially disabled, resulting in the amputation thereof

or in an aggravation or increase in such permanent partial disability but not resulting in the permanent total disability of such worker, his or her compensation for such partial disability shall be adjudged with regard to the previous disability of the injured member or part and the degree or extent of the aggravation or increase of disability thereof.

(6) When the compensation provided for in subsections (1) through (3) of this section exceeds three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, payment shall be made in monthly payments in accordance with the schedule of temporary total disability payments set forth in RCW 51.32.090 until such compensation is paid to the injured worker in full, except that the first monthly payment shall be in an amount equal to three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018. Upon application of the injured worker or survivor the monthly payment may be converted, in whole or in part, into a lump sum payment, in which event the monthly payment shall cease in whole or in part. Such conversion may be made only upon written application of the injured worker or survivor to the department and shall rest in the discretion of the department depending upon the merits of each individual application. Upon the death of a worker all unpaid installments accrued shall be paid according to the payment schedule established prior to the death of the worker to the widow or widower, or if there is no widow or widower surviving, to the dependent children of such claimant, and if there are no such dependent children, then to such other dependents as defined by this title.

(7) Awards payable under this section are governed by the schedule in effect on the date of injury. [2011 1st sp.s. c 37 § 401; 2007 c 172 § 1; 1993 c 520 § 1; 1988 c 161 § 6; 1986 c 58 § 2; 1982 1st ex.s. c 20 § 2; 1979 c 104 § 1; 1977 ex.s. c 350 § 46; 1972 ex.s. c 43 § 21; 1971 ex.s. c 289 § 10; 1965 ex.s. c 165 § 1; 1961 c 274 § 3; 1961 c 23 § 51.32.080. Prior: 1957 c 70 § 32; prior: 1951 c 115 § 4; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Application—2007 c 172: "This act applies to all pension orders issued on or after July 22, 2007." [2007 c 172 § 2.]

Additional notes found at www.leg.wa.gov

51.32.090 Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations—Finding—Rules. (1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3)(a) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the

payments shall cease. If and so long as the present earning power is only partially restored, the payments shall:

(i) For claims for injuries that occurred before May 7, 1993, continue in the proportion which the new earning power shall bear to the old; or

(ii) For claims for injuries occurring on or after May 7, 1993, equal eighty percent of the actual difference between the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed one hundred fifty percent of the average monthly wage in the state as computed under RCW 51.08.018; (B) the payments may not exceed one hundred percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

(b) No compensation shall be payable under this subsection (3) unless the loss of earning power shall exceed five percent.

(c) The prior closure of the claim or the receipt of permanent partial disability benefits shall not affect the rate at which loss of earning power benefits are calculated upon reopening the claim.

(4)(a) The legislature finds that long-term disability and the cost of injuries is significantly reduced when injured workers remain at work following their injury. To encourage employers at the time of injury to provide light duty or transitional work for their workers, wage subsidies and other incentives are made available to employers insured with the department.

(b) Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician or licensed advanced registered nurse practitioner as able to perform available work other than his or her usual work, the employer shall furnish to the physician or licensed advanced registered nurse practitioner, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the physician or licensed advanced registered nurse practitioner to relate the physical activities of the job to the worker's disability. The physician or licensed advanced registered nurse practitioner shall then determine whether the worker is physically able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her physician or licensed advanced registered nurse practitioner for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician or licensed advanced registered nurse practitioner to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician or licensed advanced registered nurse practitioner he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

(c) To further encourage employers to maintain the employment of their injured workers, an employer insured

with the department and that offers work to a worker pursuant to this subsection (4) shall be eligible for reimbursement of the injured worker's wages for light duty or transitional work equal to fifty percent of the basic, gross wages paid for that work, for a maximum of sixty-six work days within a consecutive twenty-four month period. In no event may the wage subsidies paid to an employer on a claim exceed ten thousand dollars. Wage subsidies shall be calculated using the worker's basic hourly wages or basic salary, and no subsidy shall be paid for any other form of compensation or payment to the worker such as tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments. An employer may not, under any circumstances, receive a wage subsidy for a day in which the worker did not actually perform any work, regardless of whether or not the employer paid the worker wages for that day.

(d) If an employer insured with the department offers a worker work pursuant to this subsection (4) and the worker must be provided with training or instruction to be qualified to perform the offered work, the employer shall be eligible for a reimbursement from the department for any tuition, books, fees, and materials required for that training or instruction, up to a maximum of one thousand dollars. Reimbursing an employer for the costs of such training or instruction does not constitute a determination by the department that the worker is eligible for vocational services authorized by RCW 51.32.095 and 51.32.099.

(e) If an employer insured with the department offers a worker work pursuant to this subsection (4), and the employer provides the worker with clothing that is necessary to allow the worker to perform the offered work, the employer shall be eligible for reimbursement for such clothing from the department, up to a maximum of four hundred dollars. However, an employer shall not receive reimbursement for any clothing it provided to the worker that it normally provides to its workers. The clothing purchased for the worker shall become the worker's property once the work comes to an end.

(f) If an employer insured with the department offers a worker work pursuant to this subsection (4) and the worker must be provided with tools or equipment to perform the offered work, the employer shall be eligible for a reimbursement from the department for such tools and equipment and related costs as determined by department rule, up to a maximum of two thousand five hundred dollars. An employer shall not be reimbursed for any tools or equipment purchased prior to offering the work to the worker pursuant to this subsection (4). An employer shall not be reimbursed for any tools or equipment that it normally provides to its workers. The tools and equipment shall be the property of the employer.

(g) An employer may offer work to a worker pursuant to this subsection (4) more than once, but in no event may the employer receive wage subsidies for more than sixty-six days of work in a consecutive twenty-four month period under one claim. An employer may continue to offer work pursuant to this subsection (4) after the worker has performed sixty-six days of work, but the employer shall not be eligible to receive wage subsidies for such work.

(h) An employer shall not receive any wage subsidies or reimbursement of any expenses pursuant to this subsection (4) unless the employer has completed and submitted the reimbursement request on forms developed by the department, along with all related information required by department rules. No wage subsidy or reimbursement shall be paid to an employer who fails to submit a form for such payment within one year of the date the work was performed. In no event shall an employer receive wage subsidy payments or reimbursements of any expenses pursuant to this subsection (4) unless the worker's physician or licensed advanced registered nurse practitioner has restricted him or her from performing his or her usual work and the worker's physician or licensed advanced registered nurse practitioner has released him or her to perform the work offered.

(i) Payments made under (b) through (g) of this subsection are subject to penalties under RCW 51.32.240(5) in cases where the funds were obtained through willful misrepresentation.

(j) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician or licensed advanced registered nurse practitioner. An employer who directs a claimant to perform work other than that approved by the attending physician and without the approval of the worker's physician or licensed advanced registered nurse practitioner shall not receive any wage subsidy or other reimbursements for such work.

(k) If the worker returns to work under this subsection (4), any employee health and welfare benefits that the worker was receiving at the time of injury shall continue or be resumed at the level provided at the time of injury. Such benefits shall not be continued or resumed if to do so is inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

(l) In the event of any dispute as to the validity of the work offered or as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination pursuant to an order that contains the notice required by RCW 51.52.060 and that is subject to appeal subject to RCW 51.52.050.

(5) An employer's experience rating shall not be affected by the employer's request for or receipt of wage subsidies.

(6) The department shall create a Washington stay-at-work account which shall be funded by assessments of employers insured through the state fund for the costs of the payments authorized by subsection (4) of this section and for the cost of creating a reserve for anticipated liabilities. Employers may collect up to one-half the fund assessment from workers.

(7) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(8) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages: PROVIDED, That holiday pay, vacation pay, sick leave, or other similar benefits shall not be deemed to be payments by the employer for the purposes of this subsection.

(9) In no event shall the monthly payments provided in this section:

(a) Exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(b) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month if the worker is married and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (9)(b) is greater than one hundred percent of the wages of the worker as determined under RCW 51.08.178, the monthly payment due to the worker shall be equal to the greater of the monthly wages of the worker or the minimum benefit set forth in this section on June 30, 2008.

(10) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

(11) The department shall adopt rules as necessary to implement this section. [2011 1st sp.s. c 37 § 101. Prior: 2007 c 284 § 3; 2007 c 190 § 1; 2004 c 65 § 9; prior: 1993 c 521 § 3; 1993 c 299 § 1; 1993 c 271 § 1; 1988 c 161 § 4; prior: 1988 c 161 § 3; 1986 c 59 § 3; (1986 c 59 § 2 expired June 30, 1989); prior: 1985 c 462 § 6; 1980 c 129 § 1; 1977 ex.s. c 350 § 47; 1975 1st ex.s. c 235 § 1; 1972 ex.s. c 43 § 22; 1971 ex.s. c 289 § 11; 1965 ex.s. c 122 § 3; 1961 c 274 § 4; 1961 c 23 § 51.32.090; prior: 1957 c 70 § 33; 1955 c 74 § 8; prior: 1951 c 115 § 3; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Finding—2011 1st sp.s. c 37: "The legislature finds that Washington state's workers' compensation system should be designed to focus on achieving the best outcomes for injured workers. The state must ensure that the workers' compensation system remains financially healthy in order to provide needed resources for injured workers. Further, the legislature recognizes that reducing the number and cost of long-term disability and pension claims, while strengthening safety programs; addressing workers' compensation system fraud by employers, workers, and providers; finding ways to improve claims management processes; studying occupational disease claims in the workers' compensation system; and establishing a fund for purposes of maintaining low, stable, and predictable premium rate increases are all key to ensuring productive worker outcomes and a financially sound system for Washington workers and employers." [2011 1st sp.s. c 37 § 1.]

Effective date—2011 1st sp.s. c 37: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of

the state government and its existing public institutions, and takes effect immediately [June 15, 2011]." [2011 1st sp.s. c 37 § 1101.]

Effective date—2007 c 284: See note following RCW 51.32.050.

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Additional notes found at www.leg.wa.gov

51.32.095 Vocational rehabilitation services—Benefits—Priorities—Allowable costs—Performance criteria. (Expires June 30, 2013.)

(1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection (4) of this section or RCW 51.32.099, as appropriate. An injured worker may not participate in vocational rehabilitation under this section or RCW 51.32.099 if such participation would result in a payment of benefits as described in RCW 51.32.240(5), and any benefits so paid shall be recovered according to the terms of that section.

(2) When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, then the following order of priorities shall be used:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills;
- (g) Modification of a new job with a new employer;
- (h) A new job with a new employer or self-employment involving on-the-job training;
- (i) Short-term retraining and job placement.

(3) Notwithstanding subsection (2) of this section, vocational services may be provided to an injured worker who has suffered the loss or complete use of both legs, or arms, or one leg and one arm, or total eyesight when, in the sole discretion of the supervisor or the supervisor's designee, these services will either substantially improve the worker's quality of life

or substantially improve the worker's ability to function in an employment setting, regardless of whether or not these services are either necessary or reasonably likely to make the worker employable at any gainful employment. Vocational services must be completed prior to the commencement of the worker's entitlement to benefits under RCW 51.32.060. However, workers who are eligible for vocational services under this subsection are not eligible for option 2 benefits, as provided in RCW 51.32.099(4).

(4)(a) For vocational plans approved prior to July 1, 1999, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(b) When the department has approved a vocational plan for a worker between July 1, 1999, through December 31, 2007, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed four thousand dollars in any fifty-two week period, and the cost of transportation and continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(c) The expenses allowed under (a) or (b) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment. However, compensation or payment of retraining with job placement expenses under (a) or (b) of this subsection may not be authorized for a period of more than fifty-two weeks, except that such period may, in the sole discretion of the supervisor after his or her review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

(d) In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(e) Costs paid under this subsection shall be chargeable to the employer's cost experience or shall be paid by the self-insurer as the case may be.

(5) In addition to the vocational rehabilitation expenditures provided for under subsection (4) of this section and RCW 51.32.099, an additional five thousand dollars may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a) Accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending physician or licensed advanced registered nurse practitioner must verify the necessity of the modifications or accommodations.

The total expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 shall not exceed five thousand dollars.

(6) When the department has approved a vocational plan for a worker prior to January 1, 2008, regardless of whether the worker has begun participating in the approved plan, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section are limited to those provided under subsections (4) and (5) of this section.

For vocational plans approved for a worker between January 1, 2008, through June 30, 2013, total vocational costs allowed by the supervisor or supervisor's designee under subsection (1) of this section shall be limited to those provided under the pilot program established in RCW 51.32.099, and vocational rehabilitation services shall conform to the requirements in RCW 51.32.099.

(7) The department shall establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section and under RCW 51.32.099. The state fund shall make referrals for vocational rehabilitation services based on these performance criteria.

(8) The department shall engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section and RCW 51.32.099.

(9) The benefits in this section and RCW 51.32.099 shall be provided for the injured workers of self-insured employers. Self-insurers shall report both benefits provided and benefits denied under this section and RCW 51.32.099 in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section or RCW 51.32.099, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

(10) Except as otherwise provided in this section or RCW 51.32.099, the benefits provided for in this section and RCW 51.32.099 are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims shall not be reopened solely for vocational rehabilitation purposes. [2011 c 291 § 1; 2007 c 72 § 1; 2004 c 65 § 10; 1999 c 110 § 1. Prior: 1996 c 151 § 1; 1996 c 59 § 1; 1988 c 161 § 9; 1985 c 339 § 2; 1983 c 70 § 2; 1982 c 63 § 11; 1980 c 14 § 10. Prior: 1977 ex.s. c 350 § 48; 1977 ex.s. c 323 § 16; 1972 ex.s. c 43 § 23; 1971 ex.s. c 289 § 12.]

Expiration date—2011 c 291: "This act expires June 30, 2013." [2011 c 291 § 3.]

Implementation—Effective date—Expiration date—2007 c 72: See notes following RCW 51.32.099.

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Legislative finding—1985 c 339: "The legislature finds that the vocational rehabilitation program created by chapter 63, Laws of 1982, has failed to assist injured workers to return to suitable gainful employment without undue loss of time from work and has increased costs of industrial insurance for employers and employees alike. The legislature further finds that the administrative structure established within the industrial insurance division of the department of labor and industries to develop and oversee the provision of vocational rehabilitation services has not provided efficient delivery of vocational rehabilitation services. The legislature finds that restructuring

the state's vocational rehabilitation program under the department of labor and industries is necessary." [1985 c 339 § 1.]

Additional notes found at www.leg.wa.gov

51.32.099 Vocational rehabilitation pilot program—Vocational plans. (Expires June 30, 2013.) (1)(a) The legislature intends to create improved vocational outcomes for Washington state injured workers and employers through legislative and regulatory change under a pilot program for the period of January 1, 2008, through June 30, 2013. This pilot vocational system is intended to allow opportunities for eligible workers to participate in meaningful retraining in high-demand occupations, improve successful return to work and achieve positive outcomes for workers, reduce the incidence of repeat vocational services, increase accountability and responsibility, and improve cost predictability. To facilitate the study and evaluation of the results of the proposed changes, the department shall establish the temporary funding of certain state fund vocational costs through the medical aid account to ensure the appropriate assessments to employers for the costs of their claims for vocational services in accordance with RCW 51.32.0991.

(b) An independent review and study of the effects of the pilot program shall be conducted to determine whether it has achieved the appropriate outcomes at reasonable cost to the system. The review shall include, at a minimum, a report on the department's performance with regard to the provision of vocational services, the skills acquired by workers who receive retraining services, the types of training programs approved, whether the workers are employed, at what jobs and wages after completion of the training program and at various times subsequent to their claim closure, the number and demographics of workers who choose the option provided in subsection (4)(b) of this section, and their employment and earnings status at various times subsequent to claim closure. The department may adopt rules, in collaboration with the subcommittee created under (c)(iii) of this subsection, to further define the scope and elements of the required study. Reports of the independent researcher are due on December 1, 2010, December 1, 2011, and December 1, 2012.

(c) In implementing the pilot program, the department shall:

(i) Establish a vocational initiative project that includes participation by the department as a partner with WorkSource, the established state system that administers the federal workforce investment act of 1998. As a partner, the department shall place vocational professional full-time employees at pilot WorkSource locations; refer some workers for vocational services to these vocational professionals; and work with employers in work source pilot areas to market the benefits of on-the-job training programs and with community colleges to reserve slots in high employer demand programs of study as defined in RCW 28B.50.030. These on-the-job training programs and community college slots may be considered by both department and private sector vocational professionals for vocational plan development. The department will also assist stakeholders in developing additional vocational training programs in various industries, including but not limited to agriculture and construction. These programs will expand the choices available to injured

workers in developing their vocational training plans with the assistance of vocational professionals.

(ii) Develop and maintain a register of state fund and self-insured workers who have been retrained or have selected any of the vocational options described in this section for at least the duration of the pilot program.

(iii) Create a vocational rehabilitation subcommittee made up of members appointed by the director for at least the duration of the pilot program. This subcommittee shall provide the business and labor partnership needed to maintain focus on the intent of the pilot program, as described in this section, and provide consistency and transparency to the development of rules and policies. The subcommittee shall report to the director at least annually and recommend to the director and the legislature any additional statutory changes needed, which may include extension of the pilot period. The subcommittee shall provide input and oversight with the department concerning the study required under (b) of this subsection. The subcommittee shall provide recommendations for additional changes or incentives for injured workers to return to work with their employer of injury.

(iv) The department shall develop an annual report concerning Washington's workers' compensation vocational rehabilitation system to the legislature and to the subcommittee by December 1, 2009, and annually thereafter with the final report due by December 1, 2012. The annual report shall include the number of workers who have participated in more than one vocational training plan beginning with plans approved on January 1, 2008, and in which industries those workers were employed. The final report shall include the department's assessment and recommendations for further legislative action, in collaboration with the subcommittee.

(2)(a) For the purposes of this section, the day the worker commences vocational plan development means the date the department or self-insurer notifies the worker of his or her eligibility for plan development services or of an eligibility determination in response to a dispute of a vocational decision.

(b) When the supervisor or supervisor's designee has decided that vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, he or she shall be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable. The vocational professional assigned to the claim shall, at the initial meeting with the worker, fully inform the worker of the return-to-work priorities set forth in RCW 51.32.095(2) and of his or her rights and responsibilities under the workers' compensation vocational system. The department shall provide tools to the vocational professional for communicating this and other information required by RCW 51.32.095 and this section to the worker.

(c) On the date the worker commences vocational plan development, the department shall also inform the employer in writing of the employer's right to make a valid return-to-work offer during the first fifteen days following the commencement of vocational plan development. However, at the sole discretion of the supervisor or the supervisor's designee, an employer may be granted an extension of time of up to ten additional days to make a valid return-to-work offer. The additional days may be allowed by the department with or without a request from the employer. The extension may

only be granted if the employer made a return-to-work offer to the worker within fifteen days of the date the worker commenced vocational plan development that met some but not all of the requirements in this section. To be valid, the offer must be for bona fide employment with the employer of injury, consistent with the worker's documented physical and mental restrictions as provided by the worker's health care provider. When the employer makes a valid return-to-work offer, the vocational plan development services and temporary total disability compensation shall be terminated effective on the starting date for the job without regard to whether the worker accepts the return-to-work offer.

(d) Following the time period described in (c) of this subsection, the employer may still provide, and the worker may accept, any valid return-to-work offer. The worker's acceptance of such an offer shall result in the termination of vocational plan development or implementation services and temporary total disability compensation effective the day the employment begins.

(3)(a) All vocational plans must contain an accountability agreement signed by the worker detailing expectations regarding progress, attendance, and other factors influencing successful participation in the plan. Failure to abide by the agreed expectations shall result in suspension of vocational benefits pursuant to RCW 51.32.110.

(b) Any formal education included as part of the vocational plan must be for an accredited or licensed program or other program approved by the department. The department shall develop rules that provide criteria for the approval of nonaccredited or unlicensed programs.

(c) The vocational plan for an individual worker must be completed and submitted to the department within ninety days of the day the worker commences vocational plan development. The department may extend the ninety days for good cause. Criteria for good cause shall be provided in rule. The frequency and reasons for good cause extensions shall be reported to the subcommittee created under subsection (1)(c)(iii) of this section.

(d) Costs for the vocational plan may include books, tuition, fees, supplies, equipment, child or dependent care, training fees for on-the-job training, the cost of furnishing tools and other equipment necessary for self-employment or reemployment, and other necessary expenses in an amount not to exceed twelve thousand dollars. This amount shall be adjusted effective July 1 of each year for vocational plans or retraining benefits available under subsection (4)(b) of this section approved on or after this date but before June 30 of the next year based on the average percentage change in tuition for the next fall quarter for all Washington state community colleges.

(e) The duration of the vocational plan shall not exceed two years from the date the plan is implemented. The worker shall receive temporary total disability compensation under RCW 51.32.090 and the cost of transportation while he or she is actively and successfully participating in a vocational plan.

(f) If the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(4) Vocational plan development services shall be completed within ninety days of commencing. Except as provided in RCW 51.32.095(3), during vocational plan develop-

ment the worker shall, with the assistance of a vocational professional, participate in vocational counseling and occupational exploration to include, but not be limited to, identifying possible job goals, training needs, resources, and expenses, consistent with the worker's physical and mental status. A vocational rehabilitation plan shall be developed by the worker and the vocational professional and submitted to the department or self-insurer. Following this submission, the worker shall elect one of the following options:

(a) Option 1: The department or self-insurer implements and the worker participates in the vocational plan developed by the vocational professional and approved by the worker and the department or self-insurer. For state fund claims, the department must review and approve the vocational plan before implementation may begin. If the department takes no action within fifteen days, the plan is deemed approved. The worker may, within fifteen days of the department's approval of the plan or of a determination that the plan is valid following a dispute, elect option 2. However, in the sole discretion of the supervisor or supervisor's designee, the department may approve an election for option 2 benefits that was submitted in writing within twenty-five days of the department's approval of the plan or of a determination that the plan is valid following a dispute if the worker provides a written explanation establishing that he or she was unable to submit his or her election of option 2 benefits within fifteen days. In no circumstance may the department approve of an election for option 2 benefits that was submitted more than twenty-five days after the department's approval of a retraining plan or of a determination that a plan is valid following a dispute.

(i) Following successful completion of the vocational plan, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) shall include consideration of transferable skills obtained in the vocational plan.

(ii) If a vocational plan is successfully completed on a claim which is thereafter reopened as provided in RCW 51.32.160, the cost and duration available for any subsequent vocational plan is limited to that in subsection (3)(d) and (e) of this section, less that previously expended.

(b) Option 2: The worker declines further vocational services under the claim and receives an amount equal to six months of temporary total disability compensation under RCW 51.32.090. The award is payable in biweekly payments in accordance with the schedule of temporary total disability payments, until such award is paid in full. These payments shall not include interest on the unpaid balance. However, upon application by the worker, and at the discretion of the department, the compensation may be converted to a lump sum payment. The vocational costs defined in subsection (3)(d) of this section shall remain available to the worker, upon application to the department or self-insurer, for a period of five years. The vocational costs shall, if expended, be available for programs or courses at any accredited or licensed institution or program from a list of those approved by the department for tuition, books, fees, supplies, equipment, and tools, without department or self-insurer oversight. The department shall issue an order as provided in RCW 51.52.050 confirming the option 2 election, setting a payment schedule, and terminating temporary total disability

benefits effective the date of the order confirming that election. The department shall thereafter close the claim. A worker who elects option 2 benefits shall not be entitled to further temporary total, or to permanent total, disability benefits except upon a showing of a worsening in the condition or conditions accepted under the claim such that claim closure is not appropriate, in which case the option 2 selection will be rescinded and the amount paid to the worker will be assessed as an overpayment. A claim that was closed based on the worker's election of option 2 benefits may be reopened as provided in RCW 51.32.160, but cannot be reopened for the sole purpose of allowing the worker to seek vocational assistance.

(i) If within five years from the date the option 2 order becomes final, the worker is subsequently injured or suffers an occupational disease or reopens the claim as provided in RCW 51.32.160, and vocational rehabilitation is found both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1), the duration of any vocational plan under subsection (3)(e) of this section shall not exceed eighteen months.

(ii) If the available vocational costs are utilized by the worker, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) shall include consideration of the transferable skills obtained.

(iii) If the available vocational costs are utilized by the worker and the claim is thereafter reopened as provided in RCW 51.32.160, the cost available for any vocational plan is limited to that in subsection (3)(d) of this section less that previously expended.

(iv) Option 2 may only be elected once per worker.

(c) The director, in his or her sole discretion, may provide the worker vocational assistance not to exceed that in subsection (3) of this section, without regard to the worker's prior option selection or benefits expended, where vocational assistance would prevent permanent total disability under RCW 51.32.060.

(5)(a) As used in this section, "vocational plan interruption" means an occurrence which disrupts the plan to the extent the employability goal is no longer attainable. "Vocational plan interruption" does not include institutionally scheduled breaks in educational programs, occasional absence due to illness, or modifications to the plan which will allow it to be completed within the cost and time provisions of subsection (3)(d) and (e) of this section.

(b) When a vocational plan interruption is beyond the control of the worker, the department or self-insurer shall recommence plan development. If necessary to complete vocational services, the cost and duration of the plan may include credit for that expended prior to the interruption. A vocational plan interruption is considered outside the control of the worker when it is due to the closure of the accredited institution, when it is due to a death in the worker's immediate family, or when documented changes in the worker's accepted medical conditions prevent further participation in the vocational plan.

(c) When a vocational plan interruption is the result of the worker's actions, the worker's entitlement to benefits

shall be suspended in accordance with RCW 51.32.110. If plan development or implementation is recommenced, the cost and duration of the plan shall not include credit for that expended prior to the interruption. A vocational plan interruption is considered a result of the worker's actions when it is due to the failure to meet attendance expectations set by the training or educational institution, failure to achieve passing grades or acceptable performance review, unaccepted or postinjury conditions that prevent further participation in the vocational plan, or the worker's failure to abide by the accountability agreement per subsection (3)(a) of this section. [2011 c 291 § 2; 2009 c 353 § 5; 2007 c 72 § 2.]

Expiration date—2011 c 291: See note following RCW 51.32.095.

Expiration date—2009 c 353 § 5: "Section 5 of this act expires June 30, 2013." [2009 c 353 § 7.]

Implementation—2007 c 72: "The department of labor and industries shall adopt rules necessary to implement this act." [2007 c 72 § 4.]

Effective date—2007 c 72: "This act takes effect January 1, 2008." [2007 c 72 § 5.]

Expiration date—2007 c 72: "This act expires June 30, 2013." [2007 c 72 § 6.]

51.32.240 Erroneous payments—Payments induced by willful misrepresentation—Adjustment for self-insurer's failure to pay benefits—Recoupment of overpayments by self-insurer—Penalty—Appeal—Enforcement of orders. (1)(a) Whenever any payment of benefits under this title is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by willful misrepresentation, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The department or self-insurer, as the case may be, must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived.

(b) Except as provided in subsections (3), (4), and (5) of this section, the department may only assess an overpayment of benefits because of adjudicator error when the order upon which the overpayment is based is not yet final as provided in RCW 51.52.050 and 51.52.060. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(c) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever the department or self-insurer fails to pay benefits because of clerical error, mistake of identity, or innocent misrepresentation, all not induced by recipient willful misrepresentation, the recipient may request an adjustment of benefits to be paid from the state fund or by the self-insurer, as the case may be, subject to the following:

(a) The recipient must request an adjustment in benefits within one year from the date of the incorrect payment or it will be deemed any claim therefore has been waived.

(b) The recipient may not seek an adjustment of benefits because of adjudicator error. Adjustments due to adjudicator error are addressed by the filing of a written request for reconsideration with the department of labor and industries or an appeal with the board of industrial insurance appeals within sixty days from the date the order is communicated as provided in RCW 51.52.050. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(3) Whenever the department issues an order rejecting a claim for benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for temporary disability benefits has been paid by a self-insurer pursuant to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the recipient thereof shall repay such benefits and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, under rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(4) Whenever any payment of benefits under this title has been made pursuant to an adjudication by the department or by order of the board or any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim whether state fund or self-insured.

(a) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience. However, if the director waives in whole or in part any such payments due a self-insurer, the self-insurer shall be reimbursed the amount waived from the self-insured employer overpayment reimbursement fund.

(b) The department shall collect information regarding self-insured claim overpayments resulting from final decisions of the board and the courts, and recoup such overpayments on behalf of the self-insurer from any open, new, or reopened state fund or self-insured claims. The department shall forward the amounts collected to the self-insurer to whom the payment is owed. The department may provide information as needed to any self-insurers from whom payments may be collected on behalf of the department or another self-insurer. Notwithstanding RCW 51.32.040, any self-insurer requested by the department to forward payments to the department pursuant to this subsection shall pay the department directly. The department shall credit the amounts recovered to the appropriate fund, or forward amounts collected to the appropriate self-insurer, as the case may be.

(c) If a self-insurer is not fully reimbursed within twenty-four months of the first attempt at recovery through the collection process pursuant to this subsection and by means of processes pursuant to subsection (6) of this section, the self-insurer shall be reimbursed for the remainder of the amount

due from the self-insured employer overpayment reimbursement fund.

(d) For purposes of this subsection, "recipient" does not include health service providers whose treatment or services were authorized by the department or self-insurer.

(e) The department or self-insurer shall first attempt recovery of overpayments for health services from any entity that provided health insurance to the worker to the extent that the health insurance entity would have provided health insurance benefits but for workers' compensation coverage.

(5)(a) Whenever any payment of benefits under this title has been induced by willful misrepresentation the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the state fund or self-insurer against whom the willful misrepresentation was committed, as the case may be, and the amount of such penalty shall be placed in the supplemental pension fund. Such repayment or recoupment must be demanded or ordered within three years of the discovery of the willful misrepresentation.

(b) For purposes of this subsection (5), it is willful misrepresentation for a person to obtain payments or other benefits under this title in an amount greater than that to which the person otherwise would be entitled. Willful misrepresentation includes:

(i) Willful false statement; or

(ii) Willful misrepresentation, omission, or concealment of any material fact.

(c) For purposes of this subsection (5), "willful" means a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact with the specific intent of obtaining, continuing, or increasing benefits under this title.

(d) For purposes of this subsection (5), failure to disclose a work-type activity must be willful in order for a misrepresentation to have occurred.

(e) For purposes of this subsection (5), a material fact is one which would result in additional, increased, or continued benefits, including but not limited to facts about physical restrictions, or work-type activities which either result in wages or income or would be reasonably expected to do so. Wages or income include the receipt of any goods or services. For a work-type activity to be reasonably expected to result in wages or income, a pattern of repeated activity must exist. For those activities that would reasonably be expected to result in wages or produce income, but for which actual wage or income information cannot be reasonably determined, the department shall impute wages pursuant to RCW 51.08.178(4).

(6) The worker, beneficiary, or other person affected thereby shall have the right to contest an order assessing an overpayment pursuant to this section in the same manner and to the same extent as provided under RCW 51.52.050 and 51.52.060. In the event such an order becomes final under chapter 51.52 RCW and notwithstanding the provisions of subsections (1) through (5) of this section, the director, director's designee, or self-insurer may file with the clerk in any county within the state a warrant in the amount of the sum representing the unpaid overpayment and/or penalty plus

interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the worker, beneficiary, or other person mentioned in the warrant, the amount of the unpaid overpayment and/or penalty plus interest accrued, and the date the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the worker, beneficiary, or other person against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department or self-insurer in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the worker, beneficiary, or other person within three days of filing with the clerk.

The director, director's designee, or self-insurer may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice to withhold and deliver property of any kind if there is reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is due, owing, or belonging to any worker, beneficiary, or other person upon whom a warrant has been served for payments due the department or self-insurer. The notice and order to withhold and deliver shall be served by a method for which receipt can be confirmed or tracked accompanied by an affidavit of service by mailing or served by the sheriff of the county, or by the sheriff's deputy, or by any authorized representative of the director, director's designee, or self-insurer. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired or in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property that may be subject to the claim of the department or self-insurer, such property shall be delivered forthwith to the director, the director's authorized representative, or self-insurer upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount, plus costs, claimed by the director, director's designee, or self-insurer in the notice. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer all exemptions

provided for by chapter 6.27 RCW to which the wage earner may be entitled.

This subsection shall only apply to orders assessing an overpayment which are issued on or after July 28, 1991: PROVIDED, That this subsection shall apply retroactively to all orders assessing an overpayment resulting from fraud, civil or criminal.

(7) Orders assessing an overpayment which are issued on or after July 28, 1991, shall include a conspicuous notice of the collection methods available to the department or self-insurer. [2011 c 290 § 6; 2008 c 280 § 2; 2004 c 243 § 7; 2001 c 146 § 10. Prior: 1999 c 396 § 1; 1999 c 119 § 1; 1991 c 88 § 1; 1986 c 54 § 1; 1975 1st ex.s. c 224 § 13.]

Effective date—2008 c 280: "Section 2 of this act takes effect January 1, 2009." [2008 c 280 § 6.]

Application—2008 c 280: See note following RCW 51.52.050.

Application—2004 c 243 § 7: "Section 7 of this act applies to willful misrepresentation determinations issued on or after July 1, 2004." [2004 c 243 § 9.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

Additional notes found at www.leg.wa.gov

Chapter 51.36 RCW MEDICAL AID

Sections

51.36.010 Findings—Minimum standards for providers—Health care provider network—Advisory group—Best practices treatment guidelines—Extent and duration of treatment—Centers for occupational health and education—Rules—Reports.

51.36.010 Findings—Minimum standards for providers—Health care provider network—Advisory group—Best practices treatment guidelines—Extent and duration of treatment—Centers for occupational health and education—Rules—Reports. (1) The legislature finds that high quality medical treatment and adherence to occupational health best practices can prevent disability and reduce loss of family income for workers, and lower labor and insurance costs for employers. Injured workers deserve high quality medical care in accordance with current health care best practices. To this end, the department shall establish minimum standards for providers who treat workers from both state fund and self-insured employers. The department shall establish a health care provider network to treat injured workers, and shall accept providers into the network who meet those minimum standards. The department shall convene an advisory group made up of representatives from or designees of the workers' compensation advisory committee and the industrial insurance medical and chiropractic advisory committees to consider and advise the department related to implementation of this section, including development of best practices treatment guidelines for providers in the network. The department shall also seek the input of various health care provider groups and associations concerning the network's implementation. Network providers must be required to follow the department's evidence-based coverage decisions and treatment guidelines, policies, and must be expected to follow other national treatment guidelines appropriate for their patient. The department, in collaboration with the advisory group, shall also establish additional best prac-

tice standards for providers to qualify for a second tier within the network, based on demonstrated use of occupational health best practices. This second tier is separate from and in addition to the centers for occupational health and education established under subsection (5) of this section.

(2)(a) Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, he or she shall receive proper and necessary medical and surgical services at the hands of a physician or licensed advanced registered nurse practitioner of his or her own choice, if conveniently located, except as provided in (b) of this subsection, and proper and necessary hospital care and services during the period of his or her disability from such injury.

(b) Once the provider network is established in the worker's geographic area, an injured worker may receive care from a nonnetwork provider only for an initial office or emergency room visit. However, the department or self-insurer may limit reimbursement to the department's standard fee for the services. The provider must comply with all applicable billing policies and must accept the department's fee schedule as payment in full.

(c) The department, in collaboration with the advisory group, shall adopt policies for the development, credentialing, accreditation, and continued oversight of a network of health care providers approved to treat injured workers. Health care providers shall apply to the network by completing the department's provider application which shall have the force of a contract with the department to treat injured workers. The advisory group shall recommend minimum network standards for the department to approve a provider's application, to remove a provider from the network, or to require peer review such as, but not limited to:

(i) Current malpractice insurance coverage exceeding a dollar amount threshold, number, or seriousness of malpractice suits over a specific time frame;

(ii) Previous malpractice judgments or settlements that do not exceed a dollar amount threshold recommended by the advisory group, or a specific number or seriousness of malpractice suits over a specific time frame;

(iii) No licensing or disciplinary action in any jurisdiction or loss of treating or admitting privileges by any board, commission, agency, public or private health care payer, or hospital;

(iv) For some specialties such as surgeons, privileges in at least one hospital;

(v) Whether the provider has been credentialed by another health plan that follows national quality assurance guidelines; and

(vi) Alternative criteria for providers that are not credentialed by another health plan.

The department shall develop alternative criteria for providers that are not credentialed by another health plan or as needed to address access to care concerns in certain regions.

(d) Network provider contracts will automatically renew at the end of the contract period unless the department provides written notice of changes in contract provisions or the department or provider provides written notice of contract termination. The industrial insurance medical advisory committee shall develop criteria for removal of a provider from the network to be presented to the department and advisory group for consideration in the development of contract terms.

(e) In order to monitor quality of care and assure efficient management of the provider network, the department shall establish additional criteria and terms for network participation including, but not limited to, requiring compliance with administrative and billing policies.

(f) The advisory group shall recommend best practices standards to the department to use in determining second tier network providers. The department shall develop and implement financial and nonfinancial incentives for network providers who qualify for the second tier. The department is authorized to certify and decertify second tier providers.

(3) The department shall work with self-insurers and the department utilization review provider to implement utilization review for the self-insured community to ensure consistent quality, cost-effective care for all injured workers and employers, and to reduce administrative burden for providers.

(4) The department for state fund claims shall pay, in accordance with the department's fee schedule, for any alleged injury for which a worker files a claim, any initial prescription drugs provided in relation to that initial visit, without regard to whether the worker's claim for benefits is allowed. In all accepted claims, treatment shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease: PROVIDED, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the state board of pharmacy as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

The supervisor of industrial insurance, the supervisor's designee, or a self-insurer, in his or her sole discretion, may authorize inoculation or other immunological treatment in cases in which a work-related activity has resulted in probable exposure of the worker to a potential infectious occupational disease. Authorization of such treatment does not bind the department or self-insurer in any adjudication of a claim

by the same worker or the worker's beneficiary for an occupational disease.

(5)(a) The legislature finds that the department and its business and labor partners have collaborated in establishing centers for occupational health and education to promote best practices and prevent preventable disability by focusing additional provider-based resources during the first twelve weeks following an injury. The centers for occupational health and education represent innovative accountable care systems in an early stage of development consistent with national health care reform efforts. Many Washington workers do not yet have access to these innovative health care delivery models.

(b) To expand evidence-based occupational health best practices, the department shall establish additional centers for occupational health and education, with the goal of extending access to at least fifty percent of injured and ill workers by December 2013 and to all injured workers by December 2015. The department shall also develop additional best practices and incentives that span the entire period of recovery, not only the first twelve weeks.

(c) The department shall certify and decertify centers for occupational health and education based on criteria including institutional leadership and geographic areas covered by the center for occupational health and education, occupational health leadership and education, mix of participating health care providers necessary to address the anticipated needs of injured workers, health services coordination to deliver occupational health best practices, indicators to measure the success of the center for occupational health and education, and agreement that the center's providers shall, if feasible, treat certain injured workers if referred by the department or a self-insurer.

(d) Health care delivery organizations may apply to the department for certification as a center for occupational health and education. These may include, but are not limited to, hospitals and affiliated clinics and providers, multispecialty clinics, health maintenance organizations, and organized systems of network physicians.

(e) The centers for occupational health and education shall implement benchmark quality indicators of occupational health best practices for individual providers, developed in collaboration with the department. A center for occupational health and education shall remove individual providers who do not consistently meet these quality benchmarks.

(f) The department shall develop and implement financial and nonfinancial incentives for center for occupational health and education providers that are based on progressive and measurable gains in occupational health best practices, and that are applicable throughout the duration of an injured or ill worker's episode of care.

(g) The department shall develop electronic methods of tracking evidence-based quality measures to identify and improve outcomes for injured workers at risk of developing prolonged disability. In addition, these methods must be used to provide systematic feedback to physicians regarding quality of care, to conduct appropriate objective evaluation of progress in the centers for occupational health and education, and to allow efficient coordination of services.

(6) If a provider fails to meet the minimum network standards established in subsection (2) of this section, the department is authorized to remove the provider from the network

or take other appropriate action regarding a provider's participation. The department may also require remedial steps as a condition for a provider to participate in the network. The department, with input from the advisory group, shall establish waiting periods that may be imposed before a provider who has been denied or removed from the network may reapply.

(7) The department may permanently remove a provider from the network or take other appropriate action when the provider exhibits a pattern of conduct of low quality care that exposes patients to risk of physical or psychiatric harm or death. Patterns that qualify as risk of harm include, but are not limited to, poor health care outcomes evidenced by increased, chronic, or prolonged pain or decreased function due to treatments that have not been shown to be curative, safe, or effective or for which it has been shown that the risks of harm exceed the benefits that can be reasonably expected based on peer-reviewed opinion.

(8) The department may not remove a health care provider from the network for an isolated instance of poor health and recovery outcomes due to treatment by the provider.

(9) When the department terminates a provider from the network, the department or self-insurer shall assist an injured worker currently under the provider's care in identifying a new network provider or providers from whom the worker can select an attending or treating provider. In such a case, the department or self-insurer shall notify the injured worker that he or she must choose a new attending or treating provider.

(10) The department may adopt rules related to this section.

(11) The department shall report to the workers' compensation advisory committee and to the appropriate committees of the legislature on each December 1st, beginning in 2012 and ending in 2016, on the implementation of the provider network and expansion of the centers for occupational health and education. The reports must include a summary of actions taken, progress toward long-term goals, outcomes of key initiatives, access to care issues, results of disputes or controversies related to new provisions, and whether any changes are needed to further improve the occupational health best practices care of injured workers. [2011 c 6 § 1; 2007 c 134 § 1; 2004 c 65 § 11; 1986 c 58 § 6; 1977 ex.s. c 350 § 56; 1975 1st ex.s. c 234 § 1; 1971 ex.s. c 289 § 50; 1965 ex.s. c 166 § 2; 1961 c 23 § 51.36.010. Prior: 1959 c 256 § 2; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Effective date—2011 c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 c 6 § 2.]

Report to legislature—2007 c 134: "By December 1, 2009, the department of labor and industries must report to the senate labor, commerce, research and development committee and the house of representatives commerce and labor committee, or successor committees, on the implementation of this act." [2007 c 134 § 2.]

Effective date—2007 c 134: "This act takes effect January 1, 2008." [2007 c 134 § 3.]

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Additional notes found at www.leg.wa.gov

Chapter 51.44 RCW

FUNDS

Sections

51.44.023	Industrial insurance rainy day fund—Administration—Advisory committee.
51.44.100	Investment of accident, medical aid, reserve, industrial insurance rainy day, supplemental pension funds.
51.44.170	Industrial insurance premium refund account.

51.44.023 Industrial insurance rainy day fund—Administration—Advisory committee. (1) There shall be, in the custody of the state treasurer, a fund to be known and designated as the industrial insurance rainy day fund.

(2) The director shall be the administrator of the fund, may transfer moneys into and out of the fund only as authorized by this section, and shall separately account for moneys in the fund from the accident and medical aid funds. The assets of this fund shall not be used for any purposes other than meeting the obligations of this title.

(3) Before proposing premium rates as provided in RCW 51.16.035, the director shall determine whether the assets of the accident and medical aid funds combined are at least ten percent but not more than thirty percent in excess of its funded liabilities, and if so transfer any excess to the industrial insurance rainy day fund, unless doing so would:

(a) Threaten the department's ability to meet the obligations of this title;

(b) Result in total assets of the rainy day fund combined with the assets of the accident and medical aid funds to exceed thirty percent of the accident and medical aid funds' liabilities.

(4) The workers' compensation advisory committee shall create a finance subcommittee made up of six members, three of whom shall represent business, and three of whom shall represent workers. The director or director's designee shall chair the committee. The committee shall provide recommendations for any changes to subsection (3)(b) of this section to the appropriate committees of the legislature by December 1, 2011.

(5) When adopting premium rates, the director may transfer moneys from the industrial insurance rainy day fund into the accident fund or medical aid fund upon finding that the transfer is necessary to reduce a rate increase or aid businesses in recovering from or during economic recessions. The director may also transfer moneys from this fund at any time liabilities increase so that total liabilities exceed assets of the accident fund, medical aid fund, or both.

(6) Notwithstanding chapter 51.52 RCW, the director's decisions regarding transfers into and out of the industrial insurance rainy day fund are not reviewable by any court or tribunal, but must be announced as part of the rule-making process for setting premium rates, and must be part of the department's rule-making file required by chapter 34.05 RCW. [2011 1st sp.s. c 37 § 601.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

51.44.100 Investment of accident, medical aid, reserve, industrial insurance rainy day, supplemental pension funds. Whenever, in the judgment of the state investment board, there shall be in the accident fund, medical

aid fund, reserve fund, industrial insurance rainy day fund, or the supplemental pension fund, funds in excess of that amount deemed by the state investment board to be sufficient to meet the current expenditures properly payable therefrom, the state investment board may invest and reinvest such excess funds in the manner prescribed by RCW 43.84.150, and not otherwise.

The state investment board may give consideration to the investment of excess funds in federally insured student loans made to persons in vocational training or retraining or reeducation programs. The state investment board may make such investments by purchasing from savings and loan associations, commercial banks, mutual savings banks, credit unions and other institutions authorized to be lenders under the federally insured student loan act, organized under federal or state law and operating in this state loans made by such institutions to residents of the state of Washington particularly for the purpose of vocational training or reeducation: PROVIDED, That the state investment board shall purchase only that portion of any loan which is guaranteed or insured by the United States of America, or by any agency or instrumentality of the United States of America: PROVIDED FURTHER, That the state investment board is authorized to enter into contracts with such savings and loan associations, commercial banks, mutual savings banks, credit unions, and other institutions authorized to be lenders under the federally insured student loan act to service loans purchased pursuant to this section at an agreed upon contract price. [2011 1st sp.s. c 37 § 602; 1990 c 80 § 1; 1981 c 3 § 41; 1973 1st ex.s. c 103 § 6; 1972 ex.s. c 92 § 2; 1965 ex.s. c 41 § 1; 1961 c 281 § 10; 1961 c 23 § 51.44.100. Prior: 1959 c 244 § 1; 1935 c 90 § 1; RRS § 7705-1.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Legislative finding—Purpose—1972 ex.s. c 92: "The legislature finds that the accident fund, medical aid fund and reserve funds could be invested in such a manner as to promote vocational training and retraining or reeducation among the workers of this state. The legislature recognizes that federally insured student loans are already available to students at institutions of higher education. The legislature declares that the purpose of this 1972 amendatory act is to encourage the state finance committee to consider making some investment funds available for investment in federally insured student loans made to persons enrolled in vocational training and retraining or reeducation programs." [1972 ex.s. c 92 § 1.]

Motor vehicle fund warrants for state highway acquisition: RCW 47.12.180 through 47.12.240.

Rehabilitation services for individuals with disabilities: Chapter 74.29 RCW.

Student loans: RCW 28B.10.280.

Uniform Minor Student Capacity to Borrow Act: Chapter 26.30 RCW.

Additional notes found at www.leg.wa.gov

51.44.170 Industrial insurance premium refund account. The industrial insurance premium refund account is created in the custody of the state treasurer. All industrial insurance refunds earned by state agencies or institutions of higher education under the state fund retrospective rating program shall be deposited into the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures from the account. Only the executive head of the agency or institution of higher education, or designee, may authorize expen-

ditures from the account. No agency or institution of higher education may make an expenditure from the account for an amount greater than the refund earned by the agency. If the agency or institution of higher education has staff dedicated to workers' compensation claims management, expenditures from the account must be used to pay for that staff, but additional expenditure from the account may be used for any program within an agency or institution of higher education that promotes or provides incentives for employee workplace safety and health and early, appropriate return-to-work for injured employees. During the 2009-2011 fiscal biennium, the legislature may transfer from the industrial insurance premium refund account to the state general fund such amounts as reflect the excess fund balance of the account. [2011 c 5 § 917; 2003 1st sp.s. c 25 § 926; 2002 c 371 § 916; 1997 c 327 § 1; 1991 sp.s. c 13 § 29; 1990 c 204 § 2.]

Effective date—2011 c 5: See note following RCW 43.79.487.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Findings—Purpose—1990 c 204: "The legislature finds that workplace safety in state employment is of paramount importance in maintaining a productive and committed state workforce. The legislature also finds that recognition in state agencies and institutions of higher education of industrial insurance programs that provide safe working environments and promote early return-to-work for injured employees will encourage agencies and institutions of higher education to develop these programs. A purpose of this act is to provide incentives for agencies and institutions of higher education to participate in industrial insurance safety programs and return-to-work programs by authorizing use of the industrial insurance premium refunds earned by agencies or institutions of higher education participating in industrial insurance retrospective rating programs. Since agency and institution of higher education retrospective rating refunds are generated from safety performance and cannot be set at predictable levels determined by the budget process, the incentive awards should not impact an agency's or institution of higher education's legislatively approved budget." [1997 c 327 § 2; 1990 c 204 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 51.48 RCW

PENALTIES

Sections

- 51.48.120 Notice of assessment for default in payments by employer—
Issuance—Service—Contents.
- 51.48.150 Notice of assessment for employer's default in payments—
Notice to withhold and deliver property due employer.

51.48.120 Notice of assessment for default in payments by employer—Issuance—Service—Contents. If any employer should default in any payment due to the state fund the director or the director's designee may issue a notice of assessment certifying the amount due, which notice shall be served upon the employer by mailing such notice to the employer by a method for which receipt can be confirmed or tracked to the employer's last known address or served in the manner prescribed for the service of a summons in a civil action. Such notice shall contain the information that an appeal must be filed with the board of industrial insurance appeals and the director by mail or personally within thirty days of the date of service of the notice of assessment in order to appeal the assessment unless a written request for reconsideration is filed with the department of labor and industries.

[2011 c 290 § 7; 1995 c 160 § 5; 1986 c 9 § 10; 1985 c 315 § 6; 1972 ex.s. c 43 § 32.]

51.48.150 Notice of assessment for employer's default in payments—Notice to withhold and deliver property due employer. The director or the director's designee is hereby authorized to issue to any person, firm, corporation, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or any agency of the state, property which is or shall become due, owing, or belonging to any employer upon whom a notice of assessment has been served by the department for payments due to the state fund. The effect of a notice and order to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability out of which such notice and order to withhold and deliver arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order to withhold and deliver when the liability out of which the notice and order to withhold and deliver arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order to withhold and deliver was made that such notice and order to withhold and deliver has been released.

The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy, by a method for which receipt can be confirmed or tracked, or by any duly authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation or any agency of the state upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with a notice and order to withhold and deliver, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's duly authorized representative upon service of the notice to withhold and deliver which will be held in trust by the director for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review, or in the alternative such party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. Should any party served and named in the notice to withhold and deliver fail to make answer to such notice and order to withhold and deliver, within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against the party named in the notice to withhold and deliver for the full amount claimed by the director in the notice to withhold and deliver together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, then the employer shall be entitled to assert in the answer to all exemptions provided

for by chapter 6.27 RCW to which the wage earner may be entitled. [2011 c 290 § 8; 1995 c 160 § 6; 1987 c 442 § 1119; 1986 c 9 § 11; 1972 ex.s. c 43 § 35.]

Chapter 51.52 RCW

APPEALS

Sections

- 51.52.050 Service of departmental action—Demand for repayment—Orders amending benefits—Reconsideration or appeal.
 51.52.120 Attorney's fee before department or board—Unlawful attorney's fees.

51.52.050 Service of departmental action—Demand for repayment—Orders amending benefits—Reconsideration or appeal. (1) Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, or if the worker, beneficiary, employer, or other person affected thereby chooses, the department may send correspondence and other legal notices by secure electronic means except for orders communicating the closure of a claim. Persons who choose to receive correspondence and other legal notices electronically shall be provided information to assist them in ensuring all electronic documents and communications are received. Correspondence and notices must be addressed to such a person at his or her last known postal or electronic address as shown by the records of the department. Correspondence and notices sent electronically are considered received on the date sent by the department. The copy, in case the same is a final order, decision, or award, shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award shall become final within sixty days from the date the order is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia. However, a department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker, shall state that such order or decision shall become final within twenty days from the date the order or decision is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia.

(2)(a) Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the worker, beneficiary, employer, or other person aggrieved thereby may request reconsideration of the department, or may appeal to the board. In an appeal before the board, the appellant shall have the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal.

(b) An order by the department awarding benefits shall become effective and benefits due on the date issued. Subject to (b)(i) and (ii) of this subsection, if the department order is appealed the order shall not be stayed pending a final deci-

sion on the merits unless ordered by the board. Upon issuance of the order granting the appeal, the board will provide the worker with notice concerning the potential of an overpayment of benefits paid pending the outcome of the appeal and the requirements for interest on unpaid benefits pursuant to RCW 51.52.135. A worker may request that benefits cease pending appeal at any time following the employer's motion for stay or the board's order granting appeal. The request must be submitted in writing to the employer, the board, and the department. Any employer may move for a stay of the order on appeal, in whole or in part. The motion must be filed within fifteen days of the order granting appeal. The board shall conduct an expedited review of the claim file provided by the department as it existed on the date of the department order. The board shall issue a final decision within twenty-five days of the filing of the motion for stay or the order granting appeal, whichever is later. The board's final decision may be appealed to superior court in accordance with RCW 51.52.110. The board shall grant a motion to stay if the moving party demonstrates that it is more likely than not to prevail on the facts as they existed at the time of the order on appeal. The board shall not consider the likelihood of recoupment of benefits as a basis to grant or deny a motion to stay. If a self-insured employer prevails on the merits, any benefits paid may be recouped pursuant to RCW 51.32.240.

(i) If upon reconsideration requested by a worker or medical provider, the department has ordered an increase in a permanent partial disability award from the amount reflected in an earlier order, the award reflected in the earlier order shall not be stayed pending a final decision on the merits. However, the increase is stayed without further action by the board pending a final decision on the merits.

(ii) If any party appeals an order establishing a worker's wages or the compensation rate at which a worker will be paid temporary or permanent total disability or loss of earning power benefits, the worker shall receive payment pending a final decision on the merits based on the following:

(A) When the employer is self-insured, the wage calculation or compensation rate the employer most recently submitted to the department; or

(B) When the employer is insured through the state fund, the highest wage amount or compensation rate uncontested by the parties.

Payment of benefits or consideration of wages at a rate that is higher than that specified in (b)(ii)(A) or (B) of this subsection is stayed without further action by the board pending a final decision on the merits.

(c) In an appeal from an order of the department that alleges willful misrepresentation, the department or self-insured employer shall initially introduce all evidence in its case in chief. Any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter. [2011 c 290 § 9; 2008 c 280 § 1; 2004 c 243 § 8; 1987 c 151 § 1; 1986 c 200 § 10; 1985 c 315 § 9; 1982 c 109 § 4; 1977 ex.s. c 350 § 75; 1975 1st ex.s. c 58 § 1; 1961 c 23 § 51.52.050. Prior: 1957 c 70 § 55; 1951 c 225 § 5; prior: (i) 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part. (ii) 1947 c 247 § 1, part; 1911 c 74 § 20, part; Rem. Supp. 1947 § 7676e, part. (iii) 1949 c

219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part. (iv) 1923 c 136 § 7, part; 1921 c 182 § 10, part; 1917 c 29 § 3, part; RRS § 7712, part. (v) 1917 c 29 § 11; RRS § 7720. (vi) 1939 c 50 § 1, part; 1927 c 310 § 9, part; 1921 c 182 § 12, part; 1919 c 129 § 5, part; 1917 c 28 § 15, part; RRS § 7724, part.]

Application—2008 c 280: "This act applies to orders issued on or after June 12, 2008." [2008 c 280 § 7.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

51.52.120 Attorney’s fee before department or board—Unlawful attorney’s fees. (1) Except for claim resolution structured settlement agreements, it shall be unlawful for an attorney engaged in the representation of any worker or beneficiary to charge for services in the department any fee in excess of a reasonable fee, of not more than thirty percent of the increase in the award secured by the attorney’s services. Such reasonable fee shall be fixed by the director or the director’s designee for services performed by an attorney for such worker or beneficiary, if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the department is communicated to the party making the application.

(2) If, on appeal to the board, the order, decision, or award of the department is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker’s or beneficiary’s right to relief is sustained by the board, the board shall fix a reasonable fee for the services of his or her attorney in proceedings before the board if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the board is communicated to the party making the application. In fixing the amount of such attorney’s fee, the board shall take into consideration the fee allowed, if any, by the director, for services before the department, and the board may review the fee fixed by the director. Any attorney’s fee set by the department or the board may be reviewed by the superior court upon application of such attorney, worker, or beneficiary. The department or self-insured employer, as the case may be, shall be served a copy of the application and shall be entitled to appear and take part in the proceedings. Where the board, pursuant to this section, fixes the attorney’s fee, it shall be unlawful for an attorney to charge or receive any fee for services before the board in excess of that fee fixed by the board.

(3) For claim resolution structured settlement agreements, fees for attorney services are limited to fifteen percent of the total amount to be paid to the worker after the agreement becomes final. The board will also decide on any disputes as to attorneys’ fees for services related to claim resolution structured settlement agreements consistent with the procedures in subsection (2) of this section.

(4) In an appeal to the board involving the presumption established under RCW 51.32.185, the attorney’s fee shall be payable as set forth under RCW 51.32.185.

(5) Any person who violates this section is guilty of a misdemeanor. [2011 1st sp.s. c 37 § 304; 2007 c 490 § 3; 2003 c 53 § 285; 1990 c 15 § 1; 1982 c 63 § 22; 1977 ex.s. c 350 § 81; 1965 ex.s. c 63 § 1; 1961 c 23 § 51.52.120. Prior:

1951 c 225 § 16; prior: 1947 c 246 § 3; Rem. Supp. 1947 § 7679-3.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

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

Additional notes found at www.leg.wa.gov

Title 52

FIRE PROTECTION DISTRICTS

Chapters

52.04 Annexation.

52.12 Powers—Burning permits.

52.26 Regional fire protection service authorities.

Chapter 52.04 RCW

ANNEXATION

Sections

52.04.071 Annexation of adjacent city, partial city, or town—Election.

52.04.071 Annexation of adjacent city, partial city, or town—Election. The county legislative authority or authorities shall by resolution call a special election to be held in the city, partial city as set forth in RCW 52.04.061(2), or town and in the fire protection district at the next date according to RCW 29A.04.321, and shall cause notice of the election to be given as provided for in RCW 29A.52.355.

The election on the annexation of the city, partial city as set forth in RCW 52.04.061(2), or town into the fire protection district shall be conducted by the auditor of the county or counties in which the city, partial city as set forth in RCW 52.04.061(2), or town and the fire protection district are located in accordance with the general election laws of the state. The results thereof shall be canvassed by the canvassing board of the county or counties. No person is entitled to vote at the election unless he or she is a qualified elector in the city, partial city as set forth in RCW 52.04.061(2), or town or unless he or she is a qualified elector within the boundaries of the fire protection district. The ballot proposition shall be in substantially the following form:

"Shall the city, partial city as set forth in RCW 52.04.061(2), or town of be annexed to and be a part of fire protection district?"

YES
NO "

If a majority of the persons voting on the proposition in the city, partial city as set forth in RCW 52.04.061(2), or town and a majority of the persons voting on the proposition in the fire protection district vote in favor thereof, the city, partial city as set forth in RCW 52.04.061(2), or town shall be annexed and shall be a part of the fire protection district. [2011 c 10 § 82; 2009 c 115 § 2; 2006 c 344 § 34; 1984 c 230 § 16; 1979 ex.s. c 179 § 2. Formerly RCW 52.04.180.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

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

Elections: Title 29A RCW.

Chapter 52.12 RCW POWERS—BURNING PERMITS

Sections

52.12.160 Firefighting services for unprotected lands.

52.12.160 Firefighting services for unprotected lands. (1) The definitions in this section apply throughout this section and RCW 4.24.780 unless the context clearly requires otherwise.

(a) "Fire protection service agency" or "agency" means any local, state, or federal governmental entity responsible for the provision of firefighting services, including fire protection districts, regional fire protection service authorities, cities, towns, port districts, the department of natural resources, and federal reservations.

(b) "Fire protection jurisdiction" means an area or property located within a fire protection district, a regional fire protection service authority, a city, a town, a port district, lands protected by the department of natural resources under chapter 76.04 RCW, or on federal lands.

(c) "Firefighting services" means the provision of fire prevention services, fire suppression services, emergency medical services, and other services related to the protection of life and property.

(d) "Improved property" means property upon which a structure is located, but does not include roads, bridges, land devoted primarily to growing and harvesting timber, or land devoted primarily to the production of livestock or agricultural commodities for commercial purposes.

(e) "Property" means land, structures, or land and structures.

(f) "Unimproved property" has the same meaning as "unimproved lands" in RCW 76.04.005.

(g) "Unprotected land" means improved property located outside a fire protection jurisdiction.

(2)(a) In order to facilitate the provision of firefighting services to unprotected lands, property owners of unprotected lands are encouraged, to the extent practicable, to form or annex into a fire protection jurisdiction or to enter into a written contractual agreement with a fire protection service agency or agencies for the provision of firefighting services. Any written contractual agreement between a property owner and a fire protection service agency must include, at minimum, a risk assessment of the property as well as a capabilities assessment for the district.

(b) Property owners of unprotected land who choose not to form or annex into a fire protection jurisdiction or to enter into a written contractual agreement with a fire protection agency or agencies for the provision of firefighting services, do so willingly and with full knowledge that a fire protection service agency is not obligated to provide firefighting services to unprotected land.

(3) In the absence of a written contractual agreement, a fire protection service agency may initiate firefighting services on unprotected land outside its fire protection jurisdiction in the following instances: (a) Service was specifically

requested by a landowner or other fire service protection agency; (b) service could reasonably be believed to prevent the spread of a fire onto lands protected by the agency; or (c) service could reasonably be believed to substantially mitigate the risk of harm to life or property by preventing the spread of a fire onto other unprotected lands.

(4)(a) The property owner or owners shall reimburse an agency initiating firefighting services on unprotected land outside its fire protection jurisdiction for actual costs that are incurred that are proportionate to the fire itself. Cost recovery is based upon the Washington fire chiefs standardized fire service fee schedule.

(b) If a property owner fails to pay or defaults in payment to an agency for services rendered, the agency is entitled to pursue payment through the collections process outlined in RCW 19.16.500 or through initiation of court action. [2011 c 200 § 1.]

Chapter 52.26 RCW REGIONAL FIRE PROTECTION SERVICE AUTHORITIES

Sections

52.26.020 Definitions.
52.26.040 Planning committee—Formulation of service plan—Competition with private ambulance service.
52.26.080 Organization and composition of governing board—Commissioner positions, districts.
52.26.100 Transfer of responsibilities and employees to authority—Civil service system.
52.26.300 Annexation of fire protection jurisdiction adjacent to authority.

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

(1) "Board" means the governing body of a regional fire protection service authority.

(2) "Elected official" means an elected official of a participating fire protection jurisdiction or a regional fire protection district commissioner created under RCW 52.26.080.

(3) "Fire protection jurisdiction" means a fire district, city, town, port district, municipal airport, or Indian tribe.

(4) "Participating fire protection jurisdiction" means a fire protection jurisdiction participating in the formation or operation of a regional fire protection service authority.

(5) "Regional fire protection service authority" or "authority" means a municipal corporation, an independent taxing authority within the meaning of Article VII, section 1 of the state Constitution, and a taxing district within the meaning of Article VII, section 2 of the state Constitution, whose boundaries are coextensive with two or more adjacent fire protection jurisdictions and that has been created by a vote of the people under this chapter to implement a regional fire protection service authority plan.

(6) "Regional fire protection service authority plan" or "plan" means a plan to develop and finance a fire protection service authority project or projects, including, but not limited to, specific capital projects, fire operations and emergency service operations pursuant to RCW 52.26.040(3)(b), and preservation and maintenance of existing or future facilities.

(7) "Regional fire protection service authority planning committee" or "planning committee" means the advisory committee created under RCW 52.26.030 to create and propose to fire protection jurisdictions a regional fire protection service authority plan to design, finance, and develop fire protection and emergency service projects.

(8) "Regular property taxes" has the same meaning as in RCW 84.04.140. [2011 c 141 § 1; 2006 c 200 § 1; 2004 c 129 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

52.26.040 Planning committee—Formulation of service plan—Competition with private ambulance service.

(1) A regional fire protection service authority planning committee shall adopt a regional fire protection service authority plan providing for the governance, design, financing, and development of fire protection and emergency services. The planning committee may consider the following factors in formulating its plan:

(a) Land use planning criteria; and

(b) The input of cities and counties located within, or partially within, a participating fire protection jurisdiction.

(2) The planning committee may coordinate its activities with neighboring cities, towns, and other local governments that engage in fire protection planning.

(3) The planning committee shall:

(a) Create opportunities for public input in the development of the plan;

(b) Adopt a plan proposing the creation of a regional fire protection service authority and recommending governance, design, financing, and development of fire protection and emergency service facilities and operations, including maintenance and preservation of facilities or systems. The plan may authorize the authority to establish a system of ambulance service to be operated by the authority or operated by contract after a call for bids. However, the authority shall not provide for the establishment of an ambulance service that would compete with any existing private ambulance service, unless the authority determines that the region served by the authority, or a substantial portion of the region served by the authority, is not adequately served by an existing private ambulance service. In determining the adequacy of an existing private ambulance service, the authority shall take into consideration objective generally accepted medical standards and reasonable levels of service which must be published by the authority. Following the preliminary conclusion by the authority that the existing private ambulance service is inadequate, and before establishing an ambulance service or issuing a call for bids, the authority shall allow a minimum of sixty days for the private ambulance service to meet the generally accepted medical standards and accepted levels of service. In the event of a second preliminary conclusion of inadequacy within a twenty-four-month period, the authority may immediately issue a call for bids or establish its own ambulance service and is not required to afford the private ambulance service another sixty-day period to meet the generally accepted medical standards and reasonable levels of service. A private ambulance service that is not licensed by the department of health or whose license is denied, suspended, or revoked is not entitled to a sixty-day period within which

to demonstrate adequacy and the authority may immediately issue a call for bids or establish an ambulance service; and

(c) In the plan, recommend sources of revenue authorized by RCW 52.26.050, identify the portions of the plan that may be amended by the board of the authority without voter approval, consistent with RCW 52.26.050, and recommend a financing plan to fund selected fire protection and emergency services and projects.

(4) Once adopted, the plan must be forwarded to the participating fire protection jurisdictions' governing bodies to initiate the election process under RCW 52.26.060.

(5) If the ballot measure is not approved, the planning committee may redefine the selected regional fire protection service authority projects, financing plan, and the ballot measure. The fire protection jurisdictions' governing bodies may approve the new plan and ballot measure, and may then submit the revised proposition to the voters at a subsequent election or a special election. If a ballot measure is not approved by the voters by the third vote, the planning committee is dissolved. [2011 c 141 § 2; 2006 c 200 § 2; 2004 c 129 § 4.]

52.26.080 Organization and composition of governing board—Commissioner positions, districts. (1) The board shall adopt rules for the conduct of business. The board shall adopt bylaws to govern authority affairs, which may include:

(a) The time and place of regular meetings;

(b) Rules for calling special meetings;

(c) The method of keeping records of proceedings and official acts;

(d) Procedures for the safekeeping and disbursement of funds; and

(e) Any other provisions the board finds necessary to include.

(2) The governing board shall be determined by the plan. However, only elected officials of participating fire protection jurisdictions and elected commissioners of the authority as provided in subsection (3) of this section are eligible to serve on the board.

(3)(a) A regional fire protection service authority plan may create one or more regional fire protection service authority commissioner positions to serve on a governing board. The following provisions define the qualifications, compensation, terms, and responsibilities of regional fire protection service authority commissioner positions:

(i) RCW 52.14.010 governs the compensation, qualifications, and ability to serve as a volunteer firefighter;

(ii) RCW 52.14.030 governs the polling places for elections; and

(iii) RCW 52.14.050 governs commissioner vacancies.

(b) The terms of office for regional fire protection service authority commissioner positions may be established by the plan, however, no single term may exceed six years and the terms of multiple positions must be staggered.

(c) Regional fire protection service authority commissioners shall take an oath of office in the manner specified by RCW 52.14.070.

(4)(a) A regional fire protection service authority plan may create commissioner districts. If commissioner districts are created, the population of each commissioner district

must be approximately equal. Commissioner districts must be redrawn as provided in chapter 29A.76 RCW.

(b) Commissioner districts shall be used as follows: (i) Only a registered voter who resides in a commissioner district may be a candidate for, or serve as, a commissioner of the commissioner district; and (ii) only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. All voters of the proposed authority must be eligible to vote at a general election to elect a commissioner of the commissioner district. If a plan includes elected officials from participating fire protection jurisdictions, the commissioner districts may be based, in part, on the jurisdictional boundaries of the participating jurisdictions. [2011 c 141 § 3; 2004 c 129 § 8.]

52.26.100 Transfer of responsibilities and employees to authority—Civil service system. (1) Except as otherwise provided in the regional fire protection service authority plan, all powers, duties, and functions of a participating fire protection jurisdiction pertaining to fire protection and emergency services shall be transferred to the regional fire protection service authority on its creation date or on the effective date that a fire protection jurisdiction is subsequently annexed into an authority.

(2)(a) Except as otherwise provided in the regional fire protection service authority plan, and on the creation date of the regional fire protection service authority or, in the case of a fire protection jurisdiction, on the effective date that the fire protection jurisdiction is subsequently annexed into an authority, all reports, documents, surveys, books, records, files, papers, or written material in the possession of the participating fire protection jurisdiction pertaining to fire protection and emergency services powers, functions, and duties shall be delivered to the regional fire protection service authority; all real property and personal property including cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the participating fire protection jurisdiction in carrying out the fire protection and emergency services powers, functions, and duties shall be transferred to the regional fire protection service authority; and all funds, credits, or other assets held by the participating fire protection jurisdiction in connection with the fire protection and emergency services powers, functions, and duties shall be transferred and credited to the regional fire protection service authority.

(b) Except as otherwise provided in the regional fire protection service authority plan, any appropriations made to the participating fire protection jurisdiction for carrying out the fire protection and emergency services powers, functions, and duties shall be transferred and credited to the regional fire protection service authority.

(c) Except as otherwise provided in the regional fire protection service authority plan, whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the governing body of the participating fire protection jurisdiction shall make a determination as to the proper allocation.

(3) Except as otherwise provided in the regional fire protection service authority plan, all rules and all pending busi-

ness before the participating fire protection jurisdiction pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the regional fire protection service authority, and all existing contracts and obligations shall remain in full force and shall be performed by the regional fire protection service authority.

(4) The transfer of the powers, duties, functions, and personnel of the participating fire protection jurisdiction shall not affect the validity of any act performed before creation of the regional fire protection service authority.

(5) If apportionments of budgeted funds are required because of the transfers, the treasurer for the authority shall certify the apportionments.

(6)(a) Subject to (c) of this subsection, all employees of the participating fire protection jurisdictions are transferred to the jurisdiction of the regional fire protection service authority on its creation date or, in the case of a fire protection jurisdiction, on the effective date that the fire protection jurisdiction is subsequently annexed into an authority. Upon transfer, unless an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of a participating fire protection jurisdiction, including rights to:

(i) Compensation at least equal to the level at the time of transfer;

(ii) Retirement, vacation, sick leave, and any other accrued benefit;

(iii) Promotion and service time accrual; and

(iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

(b) If any or all of the participating fire protection jurisdictions provide for civil service in their fire departments, the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions must negotiate regarding the establishment of a civil service system within the authority. This subsection does not apply if none of the participating fire protection districts provide for civil service.

(c) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified as provided by law. [2011 c 271 § 1; 2006 c 200 § 7; 2004 c 129 § 10.]

52.26.300 Annexation of fire protection jurisdiction adjacent to authority. (1) A fire protection jurisdiction that is adjacent to the boundary of a regional fire protection service authority is eligible for annexation by the authority.

(2) An annexation is initiated by the adoption of a resolution by the governing body of a fire protection jurisdiction requesting the annexation. The resolution requesting annexation must then be filed with the governing board of the authority that is requested to annex the fire protection jurisdiction.

(3) Except as otherwise provided in the regional fire protection service authority plan, on receipt of the resolution

requesting annexation, the governing board of the authority may adopt a resolution amending its plan to establish terms and conditions of the requested annexation and submit the resolution and plan amendment to the fire protection jurisdiction requesting annexation. An election to authorize the annexation may be held only if the governing body of the fire protection jurisdiction seeking annexation adopts a resolution approving both the annexation and the related plan amendment.

(4)(a) An annexation is authorized if the voters in the fire protection jurisdiction proposed to be annexed approve by a simple majority vote a single ballot measure approving the annexation and related plan amendment.

(b) An annexation is effective on the date specified in the ballot measure. In the event the ballot measure does not specify an effective date, the effective date is on the subsequent January 1st or July 1st, whichever occurs first. [2011 c 271 § 2.]

Title 53

PORT DISTRICTS

Chapters

53.08 Powers.

53.12 Commissioners—Elections.

Chapter 53.08 RCW

POWERS

Sections

- 53.08.030 Operation of foreign trade zones.
- 53.08.320 Moorage facilities—Rules authorized—Port charges, delinquency—Abandoned vessels, public sale.

53.08.030 Operation of foreign trade zones. A district may apply to the United States for permission to establish, operate, and maintain foreign trade zones: (1) Within the district; and (2) on property adjacent to but outside the district if the property is beyond the boundaries of any existing foreign trade zone grantee and is not currently designated as a foreign trade zone: PROVIDED, That nothing herein shall be construed to prevent such zones from being operated and financed by a private corporation(s) on behalf of such district acting as zone sponsor: PROVIDED FURTHER, That when the money so raised is to be used exclusively for the purpose of acquiring land for sites and constructing warehouses, storage plants, and other facilities to be constructed within the zone for use in the operation and maintenance of the zones, the district may contract indebtedness and issue general bonds therefor in an amount, in addition to the three-fourths of one percent hereinafter fixed, of one percent of the value of the taxable property in the district, as the term "value of the taxable property" is defined in RCW 39.36.015, such additional indebtedness only to be incurred with the assent of three-fifths of the voters of the district voting thereon. [2011 c 11 § 1; 1977 ex.s. c 196 § 7; 1970 ex.s. c 42 § 31; 1955 c 65 § 4. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Foreign trade zones: Chapter 24.46 RCW.

Additional notes found at www.leg.wa.gov

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

(1) Procedures authorizing moorage facility personnel to take reasonable measures, including the use of chains, ropes, and locks, or removal from the water, to secure vessels within the moorage facility so that the vessels are in the possession and control of the moorage facility operator and cannot be removed from the moorage facility. These procedures may be used if an owner mooring or storing a vessel at the moorage facility fails, after being notified that charges are owing and of the owner's right to commence legal proceedings to contest that such charges are owing, to pay the port charges owed or to commence legal proceedings. Notification shall be by registered mail to the owner at his or her last known address. In the case of a transient vessel, or where no address was furnished by the owner, the moorage facility operator need not give such notice prior to securing the vessel. At the time of securing the vessel, an authorized moorage facility employee shall attach to the vessel a readily visible notice. The notice shall be of a reasonable size and shall contain the following information:

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

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

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

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

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

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

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

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

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

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

(c) The proceeds of a sale under this section shall first be applied to the payment of port charges. The balance, if any, shall be paid to the owner. If the owner cannot in the exercise of due diligence be located by the moorage facility operator

within one year of the date of the sale, the excess funds from the sale shall revert to the derelict vessel removal account established in RCW 79.100.100. If the sale is for a sum less than the applicable port charges, the moorage facility operator is entitled to assert a claim for a deficiency.

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

(6) The rules authorized under this section shall be enforceable only if the moorage facility has had its tariff containing such rules conspicuously posted at its moorage facility at all times. [2011 c 247 § 3; 2002 c 286 § 23; 1986 c 260 § 2; 1985 c 7 § 124; 1983 c 188 § 2.]

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

Additional notes found at www.leg.wa.gov

Chapter 53.12 RCW

COMMISSIONERS—ELECTIONS

Sections

53.12.260 Compensation.

53.12.260 Compensation. (1) Each commissioner of a port district shall receive ninety dollars, as adjusted for inflation by the office of financial management in subsection (4) of this section, per day or portion thereof spent (a) in actual attendance at official meetings of the port district commission, or (b) in performance of other official services or duties on behalf of the district. The total per diem compensation of a port commissioner shall not exceed eight thousand six hundred forty dollars in a year, as adjusted for inflation by the office of financial management in subsection (4) of this section, or ten thousand eight hundred dollars in any year, as adjusted for inflation by the office of financial management in subsection (4) of this section, for a port district with gross operating income of twenty-five million or more in the preceding calendar year.

(2) Port commissioners shall receive additional compensation as follows: (a) Each commissioner of a port district with gross operating revenues of twenty-five million dollars or more in the preceding calendar year shall receive a salary of five hundred dollars per month, as adjusted for inflation by the office of financial management in subsection (4) of this section; and (b) each commissioner of a port district with gross operating revenues of from one million dollars to less than twenty-five million dollars in the preceding calendar year shall receive a salary of two hundred dollars per month, as adjusted for inflation by the office of financial management in subsection (4) of this section.

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

(4) For any commissioner who has not elected to become a member of public employees retirement system before May 1, 1975, the compensation provided pursuant to this section shall not be considered salary for purposes of the provisions of any retirement system created pursuant to the general laws of this state nor shall attendance at such meetings or other

service on behalf of the district constitute service as defined in RCW 41.40.010(37): PROVIDED, That in the case of a port district when commissioners are receiving compensation and contributing to the public employees retirement system, these benefits shall continue in full force and effect notwithstanding the provisions of RCW 53.12.260 and 53.12.265.

The dollar thresholds for salaries and per diem compensation established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2011 c 152 § 1; 2007 c 469 § 3; 1998 c 121 § 3; 1992 c 146 § 12; 1985 c 330 § 3; 1975 1st ex.s. c 187 § 1.]

Title 54

PUBLIC UTILITY DISTRICTS

Chapters

- 54.04** General provisions.
- 54.16** Powers.
- 54.28** Privilege taxes.
- 54.52** Voluntary contributions to assist low-income customers.

Chapter 54.04 RCW

GENERAL PROVISIONS

Sections

- 54.04.050 Group employee insurance—Deferred compensation plans—Supplemental savings plans.

54.04.050 Group employee insurance—Deferred compensation plans—Supplemental savings plans. (1) Subject to chapter 48.62 RCW, any public utility district engaged in the operation of electric or water utilities may enter into contracts of group insurance for the benefit of its employees, and pay all or any part of the premiums for such insurance. Such premiums shall be paid out of the revenues

derived from the operation of such properties: PROVIDED, That if the premium is to be paid by the district and employees jointly, and the benefits of the policy are offered to all eligible employees, not less than seventy-five percent of such employees may be so insured.

(2) A public utility district engaged in the operation of electric or water utilities may establish and maintain for the benefit of its eligible employees and officials any plan of deferred compensation or supplemental savings plan for retirement, and make contributions or pay benefits thereunder out of the revenue derived from the operation of its properties. For purposes of this section, "contributions" includes contributions on behalf of an eligible employee equal to the amount by which the employee agrees to a reduction in salary or wages and also includes contributions made by the public utility district separate from amounts otherwise intended as salary or wages. Coverage of an employee under a plan under this section does not render the employee or official ineligible for simultaneous membership and participation in any pension system for public employees.

(3) Contributions must be deposited in designated accounts, held in trust, or remitted to an insurer. When deposited to an account or held in trust, the account or trust fund is considered a public retirement fund within the meaning of Article XXIX, section 1 of the state Constitution, for the purpose of determining eligible investments and deposits of money into the account or trust.

(4) Contributions may be deposited or invested in a credit union, savings and loan association, bank, mutual savings bank, purchase life insurance, shares of an investment company, or fixed or variable annuity contracts from any insurance company or any investment company licensed to contract business in this state. To the extent a plan is an individual account plan, participants in the plan may be permitted to self-direct the investment of assets allocated to their account through the selection of investment options authorized under the plan, and an employee, official, or commissioner of the district is not liable for any loss or deficiency resulting from participant investments. An "individual account plan" is a plan that provides for an individual account for each participant and for benefits based upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts or other participants which may be allocated to that participant's account. [2011 c 30 § 1; 1991 sp.s. c 30 § 23; 1984 c 15 § 1; 1959 c 233 § 1; 1941 c 245 § 8; Rem. Supp. 1941 § 11616-6.]

Intent—2011 c 30: "This act is intended to clarify existing authority of public utility districts to provide deferred compensation and supplemental savings plans for retirement for their employees, commissioners, and other officials." [2011 c 30 § 2.]

Group insurance: Chapters 48.21 and 48.24 RCW.

Hospitalization and medical insurance authorized: RCW 41.04.180.

Additional notes found at www.leg.wa.gov

Chapter 54.16 RCW

POWERS

Sections

- 54.16.180 Sale, lease, disposition of properties, equipment, and materials—Procedure—Acquisition, operation of sewage system by districts in certain counties.

54.16.405 Voluntary donations for purpose of supporting hunger programs.

54.16.180 Sale, lease, disposition of properties, equipment, and materials—Procedure—Acquisition, operation of sewage system by districts in certain counties. (1) A district may sell and convey, lease, or otherwise dispose of all or any part of its works, plants, systems, utilities and properties, after proceedings and approval by the voters of the district, as provided for the lease or disposition of like properties and facilities owned by cities and towns. The affirmative vote of three-fifths of the voters voting at an election on the question of approval of a proposed sale shall be necessary to authorize such a sale.

(2) A district may, without the approval of the voters, sell, convey, lease, or otherwise dispose of all or any part of the property owned by it that is located:

(a) Outside its boundaries, to another public utility district, city, town or other municipal corporation; or

(b) Within or without its boundaries, which has become unserviceable, inadequate, obsolete, worn out or unfit to be used in the operations of the system and which is no longer necessary, material to, and useful in such operations, to any person or public body.

(3) A district may sell, convey, lease or otherwise dispose of items of equipment or materials to any other district, to any cooperative, mutual, consumer-owned or investor-owned utility, to any federal, state, or local government agency, to any contractor employed by the district or any other district, utility, or agency, or any customer of the district or of any other district or utility, from the district's stores without voter approval or resolution of the district's board, if such items of equipment or materials cannot practicably be obtained on a timely basis from any other source, and the amount received by the district in consideration for any such sale, conveyance, lease, or other disposal of such items of equipment or materials is not less than the district's cost to purchase such items or the reasonable market value of equipment or materials.

(4) A district located within a county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand may sell and convey to a city of the first class, which owns its own water system, all or any part of a water system owned by the district where a portion of it is located within the boundaries of the city, without approval of the voters, upon such terms and conditions as the district shall determine.

(5) A district located in a county with a population of from twelve thousand to less than eighteen thousand and bordered by the Columbia river may, separately or in connection with the operation of a water system, or as part of a plan for acquiring or constructing and operating a water system, or in connection with the creation of another or subsidiary local utility district, provide for the acquisition or construction, additions or improvements to, or extensions of, and operation of, a sewage system within the same service area as in the judgment of the district commission is necessary or advisable to eliminate or avoid any existing or potential danger to public health due to lack of sewerage facilities or inadequacy of existing facilities.

(6) A district located within a county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand bordering on Puget Sound may sell and convey to any city or town with a population of less than ten thousand all or any part of a water system owned by the district without approval of the voters upon such terms and conditions as the district shall determine.

(7) A district located within a county with a population of from six hundred fifty thousand to less than seven hundred fifty thousand bordering on Puget Sound may sell and convey to any city or town with a population of less than sixty-five thousand which owns its own water system all or any part of a water system owned by the district without approval of the voters upon such terms and conditions as the district shall determine.

(8) A district may sell and convey, lease, or otherwise dispose of, to any person or entity without approval of the voters and upon such terms and conditions as it determines, all or any part of an electric generating project owned directly or indirectly by the district, regardless of whether the project is completed, operable, or operating, as long as:

(a) The project is or would be powered by an eligible renewable resource as defined in RCW 19.285.030; and

(b) The district, or the separate legal entity in which the district has an interest in the case of indirect ownership, has:

(i) The right to lease the project or to purchase all or any part of the energy from the project during the period in which it does not have a direct or indirect ownership interest in the project; and

(ii) An option to repurchase the project or part thereof sold, conveyed, leased, or otherwise disposed of at or below fair market value upon termination of the lease of the project or termination of the right to purchase energy from the project.

(9) Districts are municipal corporations for the purposes of this section. A commission shall be held to be the legislative body, a president and secretary shall have the same powers and perform the same duties as a mayor and city clerk, and the district resolutions shall be held to be ordinances within the meaning of statutes governing the sale, lease, or other disposal of public utilities owned by cities and towns. [2011 c 285 § 1; 2008 c 198 § 5; 1999 c 69 § 1; 1994 c 81 § 78; 1991 c 363 § 135; 1977 ex.s. c 31 § 1; 1963 c 196 § 1; 1959 c 275 § 1; 1955 c 390 § 19. Prior: 1945 c 143 § 1(m); 1931 c 1 § 6(m); Rem. Supp. 1945 § 11610(m).]

Finding—2008 c 198: See note following RCW 39.34.030.

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

54.16.405 Voluntary donations for purpose of supporting hunger programs. (1) Public utility districts may request voluntary donations from their customers for the purpose of supporting hunger programs.

(2) Voluntary donations collected by public utility districts under this section must be used by the public utility district to support the maintenance and operation of hunger programs.

(3) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW.

(4) Nothing in this section precludes a public utility district from requesting voluntary donations to support other programs. [2011 c 226 § 1.]

**Chapter 54.28 RCW
PRIVILEGE TAXES**

Sections

54.28.090 Deposit of funds to credit of certain taxing districts—Retention and distribution of tax proceeds for county with district owned by another county.

54.28.090 Deposit of funds to credit of certain taxing districts—Retention and distribution of tax proceeds for county with district owned by another county. (1) The county legislative authority of each county must direct the county treasurer to deposit funds to the credit of each taxing district in the county, other than school districts, according to the manner they deem most equitable; except not less than an amount equal to three-fourths of one percent of the gross revenues obtained by a district from the sale of electric energy within any incorporated city or town must be remitted to such city or town. Information furnished by the district to the county legislative authority must be the basis for the determination of the amount to be paid to such cities or towns under this subsection.

(2) In the event that a county receives tax proceeds under RCW 54.28.050 because a public utility district operated by another county owns fee title to property in a city or town in the county that receives such tax proceeds, and that city or town adjoins a reservoir on the Columbia river wholly or partially created by such district's hydroelectric facility which began commercial power generation in 1967, but the district has no sales of electrical energy in that city or town, the county may retain seventy percent of such tax proceeds. The county must remit the remainder of the tax proceeds to the city or town in which the district owns fee title to property but has no sales of electrical energy. If the district owns fee title to property in more than one city or town in the county receiving such tax proceeds, and has no sales of electrical energy in those cities or towns, the remainder of the tax must be divided evenly among all such cities and towns.

(3) The provisions of this section do not apply to the distribution of taxes collected under RCW 54.28.025. [2011 c 361 § 1; 1980 c 154 § 9; 1977 ex.s. c 366 § 5; 1957 c 278 § 10.]

Application—2011 c 361: "This act applies to public utility district privilege taxes to be distributed in 2012 and each year thereafter." [2011 c 361 § 2.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82.45 RCW digest.

**Chapter 54.52 RCW
VOLUNTARY CONTRIBUTIONS TO ASSIST
LOW-INCOME CUSTOMERS**

Sections

54.52.010 Voluntary contributions to assist low-income residential customers—Administration.

54.52.010 Voluntary contributions to assist low-income residential customers—Administration. (1) A public utility district may include along with, or as part of, its regular customer billings a request for voluntary contributions to assist qualified low-income residential customers of the district in paying their electricity bills. All funds received by the district in response to such requests shall be (a) transmitted (i) to the grantee of the department of commerce which administers federally funded energy assistance programs for the state in the district's service area or (ii) to a charitable organization within the district's service area; or (b) retained by the district. All such funds shall be used solely to supplement assistance to low-income residential customers of the district in paying their electricity bills. The grantee, charitable organization, or district is responsible to determine which of the district's customers are qualified for low-income assistance and the amount of assistance to be provided to those who are qualified.

(2) A public utility district may include with or as part of its regular customer billings, a request for voluntary contributions to assist qualified low-income residential customers of the district in paying their water and sewer bills. All funds received by the district as a result of these requests shall be transmitted to a charitable organization within the district's service area or retained by the district and distributed solely to assist qualified low-income residential customers in paying their water and sewer bills. The charitable organization or district is responsible for determining which of the district's customers are qualified to receive low-income assistance and the amount of assistance provided to qualified customers. [2011 c 29 § 1; 2007 c 132 § 1; 1995 c 399 § 145; 1985 c 6 § 20; 1984 c 59 § 1.]

Title 57

WATER-SEWER DISTRICTS

Chapters

57.08 Powers.

**Chapter 57.08 RCW
POWERS**

Sections

57.08.016 Sale of unnecessary property authorized—Additional requirements for sale of realty.

57.08.016 Sale of unnecessary property authorized—Additional requirements for sale of realty. (1) There shall be no private sale of real property where the estimated value exceeds the sum of five thousand dollars. Estimated value shall be determined by the board of commissioners and based upon real estate appraiser and broker advice as it considers appropriate. Subject to the provisions of subsection (2) of this section, no real property of the district shall be sold for less than ninety percent of the value thereof. Where the estimated value of the real property exceeds five thousand dollars, value shall be established by a written broker price opinion made not more than six months prior to the date of sale by three disinterested real estate brokers licensed under the laws of the state or by one professionally designated real estate

appraiser as defined in chapter 18.140 RCW. A broker price opinion shall be signed by the broker and an appraisal must be signed by the appraiser and filed with the secretary of the board of commissioners of the district, who shall keep it at the office of the district open to public inspection. Any notice of intention to sell real property of the district shall recite the estimated value or, if an appraisal has been made, the appraised value thereof.

(2) If no purchasers can be obtained for the property at ninety percent or more of its estimated or appraised value after one hundred twenty days of offering the property for sale, the board of commissioners of the district may adopt a resolution stating that the district has been unable to sell the property at the ninety percent amount. The district then may sell the property at the highest price it can obtain at public auction. A notice of intention to sell at public auction shall be published once a week for two consecutive weeks in a newspaper of general circulation in the district. The notice shall describe the property, state the time and place at which it will be offered for sale and the terms of sale, and shall call for bids, fix the conditions thereof, and reserve the right to reject any and all bids for good cause. [2011 c 90 § 1; 1999 c 153 § 5; 1996 c 230 § 306; 1993 c 198 § 20; 1989 c 308 § 8; 1988 c 162 § 2; 1984 c 103 § 3; 1953 c 50 § 2.]

Additional notes found at www.leg.wa.gov

Title 59

LANDLORD AND TENANT

Chapters

- 59.18 Residential landlord-tenant act.**
- 59.20 Manufactured/mobile home landlord-tenant act.**
- 59.21 Mobile home relocation assistance.**
- 59.22 Office of mobile/manufactured home relocation assistance—Resident-owned mobile home parks.**
- 59.30 Manufactured/mobile home communities—Dispute resolution and registration.**

Chapter 59.18 RCW

RESIDENTIAL LANDLORD-TENANT ACT

Sections

- 59.18.030 Definitions.
- 59.18.060 Landlord—Duties.
- 59.18.063 Landlord—Written receipts for payments made by tenant.
- 59.18.065 Landlord—Copy of written rental agreement to tenant.
- 59.18.100 Landlord's failure to carry out duties—Repairs effected by tenant—Procedure—Deduction of cost from rent—Limitations.
- 59.18.110 Failure of landlord to carry out duties—Determination by court or arbitrator—Judgment against landlord for diminished rental value and repair costs—Enforcement of judgment—Reduction in rent under certain conditions.
- 59.18.130 Duties of tenant.
- 59.18.150 Landlord's right of entry—Purposes—Searches by fire officials—Searches by code enforcement officials for inspection purposes—Conditions.
- 59.18.180 Tenant's failure to comply with statutory duties—Landlord to give tenant written notice of noncompliance—Landlord's remedies.
- 59.18.230 Waiver of chapter provisions prohibited—Provisions prohibited from rental agreement—Distress for rent abolished—Detention of personal property for rent—Remedies.
- 59.18.253 Deposit to secure occupancy by tenant—Landlord's duties—Violation.

- 59.18.260 Moneys paid as deposit or security for performance by tenant—Written rental agreement to specify terms and conditions for retention by landlord—Written checklist required.
- 59.18.270 Moneys paid as deposit or security for performance by tenant—Deposit by landlord in trust account—Receipt—Remedies under foreclosure—Claims.
- 59.18.285 Nonrefundable fees not to be designated as deposit—Written rental agreement required—Remedies.
- 59.18.310 Default in rent—Abandonment—Liability of tenant—Landlord's remedies—Sale of tenant's property by landlord.
- 59.18.312 Writ of restitution—Storage and sale of tenant's property—Use of proceeds from sale—Service by sheriff, form.
- 59.18.380 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Answer—Order—Stay—Bond.
- 59.18.390 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Service—Defendant's bond.
- 59.18.410 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Judgment—Execution.

59.18.030 Definitions. As used in this chapter:

(1) "Certificate of inspection" means an unsworn statement, declaration, verification, or certificate made in accordance with the requirements of RCW 9A.72.085 by a qualified inspector that states that the landlord has not failed to fulfill any substantial obligation imposed under RCW 59.18.060 that endangers or impairs the health or safety of a tenant, including (a) structural members that are of insufficient size or strength to carry imposed loads with safety, (b) exposure of the occupants to the weather, (c) plumbing and sanitation defects that directly expose the occupants to the risk of illness or injury, (d) not providing facilities adequate to supply heat and water and hot water as reasonably required by the tenant, (e) providing heating or ventilation systems that are not functional or are hazardous, (f) defective, hazardous, or missing electrical wiring or electrical service, (g) defective or hazardous exits that increase the risk of injury to occupants, and (h) conditions that increase the risk of fire.

(2) "Distressed home" has the same meaning as in RCW 61.34.020.

(3) "Distressed home conveyance" has the same meaning as in RCW 61.34.020.

(4) "Distressed home purchaser" has the same meaning as in RCW 61.34.020.

(5) "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single-family residences and units of multiplexes, apartment buildings, and mobile homes.

(6) "Gang" means a group that: (a) Consists of three or more persons; (b) has identifiable leadership or an identifiable name, sign, or symbol; and (c) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

(7) "Gang-related activity" means any activity that occurs within the gang or advances a gang purpose.

(8) "In danger of foreclosure" means any of the following:

(a) The homeowner has defaulted on the mortgage and, under the terms of the mortgage, the mortgagee has the right to accelerate full payment of the mortgage and repossess, sell, or cause to be sold the property;

(b) The homeowner is at least thirty days delinquent on any loan that is secured by the property; or

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four

months due to a lack of funds, and the homeowner has reported this belief to:

- (i) The mortgagee;
- (ii) A person licensed or required to be licensed under chapter 19.134 RCW;
- (iii) A person licensed or required to be licensed under chapter 19.146 RCW;
- (iv) A person licensed or required to be licensed under chapter 18.85 RCW;
- (v) An attorney-at-law;
- (vi) A mortgage counselor or other credit counselor licensed or certified by any federal, state, or local agency; or
- (vii) Any other party to a distressed property conveyance.

(9) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the owner, lessor, or sublessor including, but not limited to, an agent, a resident manager, or a designated property manager.

(10) "Mortgage" is used in the general sense and includes all instruments, including deeds of trust, that are used to secure an obligation by an interest in real property.

(11) "Owner" means one or more persons, jointly or severally, in whom is vested:

- (a) All or any part of the legal title to property; or
- (b) All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

(12) "Person" means an individual, group of individuals, corporation, government, or governmental agency, business trust, estate, trust, partnership, or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(13) "Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility which is held out for use by the tenant.

(14) "Property" or "rental property" means all dwelling units on a contiguous quantity of land managed by the same landlord as a single, rental complex.

(15) "Qualified inspector" means a United States department of housing and urban development certified inspector; a Washington state licensed home inspector; an American society of home inspectors certified inspector; a private inspector certified by the national association of housing and redevelopment officials, the American association of code enforcement, or other comparable professional association as approved by the local municipality; a municipal code enforcement officer; a Washington licensed structural engineer; or a Washington licensed architect.

(16) "Reasonable attorneys' fees," where authorized in this chapter, means an amount to be determined including the following factors: The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results obtained, and the experience, reputation and ability of the lawyer or lawyers performing the services.

(17) "Rental agreement" means all agreements which establish or modify the terms, conditions, rules, regulations,

or any other provisions concerning the use and occupancy of a dwelling unit.

(18) A "single-family residence" is a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single-family residence if it has direct access to a street and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit.

(19) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement. [2011 c 132 § 1. Prior: 2010 c 148 § 1; 2008 c 278 § 12; 1998 c 276 § 1; 1973 1st ex.s. c 207 § 3.]

59.18.060 Landlord—Duties. The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition endangers or impairs the health or safety of the tenant;

(2) Maintain the structural components including, but not limited to, the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components, in reasonably good repair so as to be usable;

(3) Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;

(4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of the tenancy and, except in the case of a single-family residence, control infestation during tenancy except where such infestation is caused by the tenant;

(5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;

(6) Provide reasonably adequate locks and furnish keys to the tenant;

(7) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by him or her in reasonably good working order;

(8) Maintain the dwelling unit in reasonably weather-tight condition;

(9) Except in the case of a single-family residence, provide and maintain appropriate receptacles in common areas for the removal of ashes, rubbish, and garbage, incidental to the occupancy and arrange for the reasonable and regular removal of such waste;

(10) Provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;

(11)(a) Provide a written notice to all tenants disclosing fire safety and protection information. The landlord or his or her authorized agent must provide a written notice to the tenant that the dwelling unit is equipped with a smoke detection device as required in RCW 43.44.110. The notice shall inform the tenant of the tenant's responsibility to maintain the smoke detection device in proper operating condition and

of penalties for failure to comply with the provisions of RCW 43.44.110(3). The notice must be signed by the landlord or the landlord's authorized agent and tenant with copies provided to both parties. Further, except with respect to a single-family residence, the written notice must also disclose the following:

(i) Whether the smoke detection device is hard-wired or battery operated;

(ii) Whether the building has a fire sprinkler system;

(iii) Whether the building has a fire alarm system;

(iv) Whether the building has a smoking policy, and what that policy is;

(v) Whether the building has an emergency notification plan for the occupants and, if so, provide a copy to the occupants;

(vi) Whether the building has an emergency relocation plan for the occupants and, if so, provide a copy to the occupants; and

(vii) Whether the building has an emergency evacuation plan for the occupants and, if so, provide a copy to the occupants.

(b) The information required under this subsection may be provided to a tenant in a multifamily residential building either as a written notice or as a checklist that discloses whether the building has fire safety and protection devices and systems. The checklist shall include a diagram showing the emergency evacuation routes for the occupants.

(c) The written notice or checklist must be provided to new tenants at the time the lease or rental agreement is signed;

(12) Provide tenants with information provided or approved by the department of health about the health hazards associated with exposure to indoor mold. Information may be provided in written format individually to each tenant, or may be posted in a visible, public location at the dwelling unit property. The information must detail how tenants can control mold growth in their dwelling units to minimize the health risks associated with indoor mold. Landlords may obtain the information from the department's web site or, if requested by the landlord, the department must mail the information to the landlord in a printed format. When developing or changing the information, the department of health must include representatives of landlords in the development process. The information must be provided by the landlord to new tenants at the time the lease or rental agreement is signed;

(13) The landlord and his or her agents and employees are immune from civil liability for failure to comply with subsection (12) of this section except where the landlord and his or her agents and employees knowingly and intentionally do not comply with subsection (12) of this section; and

(14) Designate to the tenant the name and address of the person who is the landlord by a statement on the rental agreement or by a notice conspicuously posted on the premises. The tenant shall be notified immediately of any changes in writing, which must be either (a) delivered personally to the tenant or (b) mailed to the tenant and conspicuously posted on the premises. If the person designated in this section does not reside in the state where the premises are located, there shall also be designated a person who resides in the county who is authorized to act as an agent for the purposes of ser-

vice of notices and process, and if no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered such agent. Regardless of such designation, any owner who resides outside the state and who violates a provision of this chapter is deemed to have submitted himself or herself to the jurisdiction of the courts of this state and personal service of any process may be made on the owner outside the state with the same force and effect as personal service within the state. Any summons or process served out-of-state must contain the same information and be served in the same manner as personal service of summons or process served within the state, except the summons or process must require the party to appear and answer within sixty days after such personal service out of the state. In an action for a violation of this chapter that is filed under chapter 12.40 RCW, service of the notice of claim outside the state must contain the same information and be served in the same manner as required under chapter 12.40 RCW, except the date on which the party is required to appear must not be less than sixty days from the date of service of the notice of claim.

No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his or her family, invitee, or other person acting under his or her control, or where a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. When the duty imposed by subsection (1) of this section is incompatible with and greater than the duty imposed by any other provisions of this section, the landlord's duty shall be determined pursuant to subsection (1) of this section. [2011 c 132 § 2; 2005 c 465 § 2; 2002 c 259 § 1; 1991 c 154 § 2; 1973 1st ex.s. c 207 § 6.]

Finding—2005 c 465: "The legislature finds that residents of the state face preventable exposures to mold in their homes, apartments, and schools. Exposure to mold, and the toxins they produce, have been found to have adverse health effects, including loss of memory and impairment of the ability to think coherently and function in a job, and may cause fatigue, nausea, and headaches.

As steps can be taken by landlords and tenants to minimize exposure to indoor mold, and as the reduction of exposure to mold in buildings could reduce the rising number of mold-related claims submitted to insurance companies and increase the availability of coverage, the legislature supports providing tenants and landlords with information designed to minimize the public's exposure to mold." [2005 c 465 § 1.]

59.18.063 Landlord—Written receipts for payments made by tenant. (1) A landlord shall provide a receipt for any payment made by a tenant in the form of cash.

(2) A landlord shall provide, upon the request of a tenant, a written receipt for any payments made by the tenant in a form other than cash. [2011 c 132 § 4; 1997 c 84 § 1.]

59.18.065 Landlord—Copy of written rental agreement to tenant. When there is a written rental agreement for the premises, the landlord shall provide an executed copy to each tenant who signs the rental agreement. The tenant may request one free replacement copy during the tenancy. [2011 c 132 § 6.]

59.18.100 Landlord's failure to carry out duties—Repairs effected by tenant—Procedure—Deduction of cost from rent—Limitations. (1) If, at any time during the tenancy, the landlord fails to carry out any of the duties imposed by RCW 59.18.060, and notice of the defect is given to the landlord pursuant to RCW 59.18.070, the tenant may submit to the landlord or his or her designated agent by first-class mail or in person a good faith estimate by the tenant of the cost to perform the repairs necessary to correct the defective condition if the repair is to be done by licensed or registered persons, or if no licensing or registration requirement applies to the type of work to be performed, the cost if the repair is to be done by responsible persons capable of performing such repairs. Such estimate may be submitted to the landlord at the same time as notice is given pursuant to RCW 59.18.070. The remedy provided in this section shall not be available for a landlord's failure to carry out the duties in RCW 59.18.060 (9) and (14). If the tenant utilizes this section for repairs pursuant to RCW 59.18.060(6), the tenant shall promptly provide the landlord with a key to any new or replaced locks. The amount the tenant may deduct from the rent may vary from the estimate, but cannot exceed the two-month limit as described in subsection (2) of this section.

(2) If the landlord fails to commence remedial action of the defective condition within the applicable time period after receipt of notice and the estimate from the tenant, the tenant may contract with a licensed or registered person, or with a responsible person capable of performing the repair if no license or registration is required, to make the repair. Upon the completion of the repair and an opportunity for inspection by the landlord or his or her designated agent, the tenant may deduct the cost of repair from the rent in an amount not to exceed the sum expressed in dollars representing two month's rental of the tenant's unit per repair. When the landlord must commence to remedy the defective condition within ten days as provided in RCW 59.18.070(3), the tenant cannot contract for repairs for ten days after notice or two days after the landlord receives the estimate, whichever is later. The total costs of repairs deducted in any twelve-month period under this subsection shall not exceed the sum expressed in dollars representing two month's rental of the tenant's unit.

(3) If the landlord fails to carry out the duties imposed by RCW 59.18.060 within the applicable time period, and if the cost of repair does not exceed one month's rent, including the cost of materials and labor, which shall be computed at the prevailing rate in the community for the performance of such work, and if repair of the condition need not by law be performed only by licensed or registered persons, and if the tenant has given notice under RCW 59.18.070, although no estimate shall be necessary under this subsection, the tenant may repair the defective condition in a workmanlike manner and upon completion of the repair and an opportunity for inspection, the tenant may deduct the cost of repair from the rent. Repairs under this subsection are limited to defects within the leased premises. The cost per repair shall not exceed one month's rent of the unit and the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed one month's rent of the unit.

(4) The provisions of this section shall not:

- (a) Create a relationship of employer and employee between landlord and tenant; or
 - (b) Create liability under the workers' compensation act; or
 - (c) Constitute the tenant as an agent of the landlord for the purposes of *RCW 60.04.010 and 60.04.040.
- (5) Any repair work performed under the provisions of this section shall comply with the requirements imposed by any applicable code, statute, ordinance, or regulation. A landlord whose property is damaged because of repairs performed in a negligent manner may recover the actual damages in an action against the tenant.
- (6) Nothing in this section shall prevent the tenant from agreeing with the landlord to undertake the repairs himself or herself in return for cash payment or a reasonable reduction in rent. Any such agreement does not alter the landlord's obligations under this chapter. [2011 c 132 § 5; 2010 c 8 § 19021; 1989 c 342 § 5; 1987 c 185 § 35; 1973 1st ex.s. c 207 § 10.]

***Reviser's note:** RCW 60.04.010 and 60.04.040 were repealed by 1991 c 281 § 31, effective April 1, 1992.

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

59.18.110 Failure of landlord to carry out duties—Determination by court or arbitrator—Judgment against landlord for diminished rental value and repair costs—Enforcement of judgment—Reduction in rent under certain conditions. (1) If a court or an arbitrator determines that:

- (a) A landlord has failed to carry out a duty or duties imposed by RCW 59.18.060; and
- (b) A reasonable time has passed for the landlord to remedy the defective condition following notice to the landlord in accordance with RCW 59.18.070 or such other time as may be allotted by the court or arbitrator; the court or arbitrator may determine the diminution in rental value of the premises due to the defective condition and shall render judgment against the landlord for the rent paid in excess of such diminished rental value from the time of notice of such defect to the time of decision and any costs of repair done pursuant to RCW 59.18.100 for which no deduction has been previously made. Such decisions may be enforced as other judgments at law and shall be available to the tenant as a set-off against any existing or subsequent claims of the landlord.

The court or arbitrator may also authorize the tenant to make or contract to make further corrective repairs and the tenant may deduct from the rent the cost of such repairs, as long as the court specifies a time period in which the landlord may make such repairs before the tenant may commence or contract for such repairs.

(2) The tenant shall not be obligated to pay rent in excess of the diminished rental value of the premises until such defect or defects are corrected by the landlord or until the court or arbitrator determines otherwise. [2011 c 132 § 7; 1973 1st ex.s. c 207 § 11.]

59.18.130 Duties of tenant. Each tenant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by

applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations, and in addition shall:

(1) Keep that part of the premises which he or she occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose from his or her dwelling unit all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant;

(3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;

(4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his or her family, invitee, licensee, or any person acting under his or her control to do so. Violations may be prosecuted under chapter 9A.48 RCW if the destruction is intentional and malicious;

(5) Not permit a nuisance or common waste;

(6) Not engage in drug-related activity at the rental premises, or allow a subtenant, sublessee, resident, or anyone else to engage in drug-related activity at the rental premises with the knowledge or consent of the tenant. "Drug-related activity" means that activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW;

(7) Maintain the smoke detection device in accordance with the manufacturer's recommendations, including the replacement of batteries where required for the proper operation of the smoke detection device, as required in RCW 43.44.110(3);

(8) Not engage in any activity at the rental premises that is:

(a) Imminently hazardous to the physical safety of other persons on the premises; and

(b)(i) Entails physical assaults upon another person which result in an arrest; or

(ii) Entails the unlawful use of a firearm or other deadly weapon as defined in RCW 9A.04.110 which results in an arrest, including threatening another tenant or the landlord with a firearm or other deadly weapon under RCW 59.18.352. Nothing in this subsection (8) shall authorize the termination of tenancy and eviction of the victim of a physical assault or the victim of the use or threatened use of a firearm or other deadly weapon;

(9) Not engage in any gang-related activity at the premises, as defined in RCW 59.18.030, or allow another to engage in such activity at the premises, that renders people in at least two or more dwelling units or residences insecure in life or the use of property or that injures or endangers the safety or health of people in at least two or more dwelling units or residences. In determining whether a tenant is engaged in gang-related activity, a court should consider the totality of the circumstances, including factors such as whether there have been a significant number of complaints to the landlord about the tenant's activities at the property, damages done by the tenant to the property, including the property of other tenants or neighbors, harassment or threats

made by the tenant to other tenants or neighbors that have been reported to law enforcement agencies, any police incident reports involving the tenant, and the tenant's criminal history; and

(10) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his or her obligations under this chapter. The tenant shall not be charged for normal cleaning if he or she has paid a nonrefundable cleaning fee. [2011 c 132 § 8; 1998 c 276 § 2; 1992 c 38 § 2; 1991 c 154 § 3; 1988 c 150 § 2; 1983 c 264 § 3; 1973 1st ex.s. c 207 § 13.]

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

Legislative findings—1988 c 150: "The legislature finds that the illegal use, sale, and manufacture of drugs and other drug-related activities is a statewide problem. Innocent persons, especially children, who come into contact with illegal drug-related activity within their own neighborhoods are seriously and adversely affected. Rental property is damaged and devalued by drug activities. The legislature further finds that a rapid and efficient response is necessary to: (1) Lessen the occurrence of drug-related enterprises; (2) reduce the drug use and trafficking problems within this state; and (3) reduce the damage caused to persons and property by drug activity. The legislature finds that it is beneficial to rental property owners and to the public to permit landlords to quickly and efficiently evict persons who engage in drug-related activities at rented premises." [1988 c 150 § 1.]

Additional notes found at www.leg.wa.gov

59.18.150 Landlord's right of entry—Purposes—Searches by fire officials—Searches by code enforcement officials for inspection purposes—Conditions. (1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) Upon written notice of intent to seek a search warrant, when a tenant or landlord denies a fire official the right to search a dwelling unit, a fire official may immediately seek a search warrant and, upon a showing of probable cause specific to the dwelling unit sought to be searched that criminal fire code violations exist in the dwelling unit, a court of competent jurisdiction shall issue a warrant allowing a search of the dwelling unit.

Upon written notice of intent to seek a search warrant, when a landlord denies a fire official the right to search the common areas of the rental building other than the dwelling unit, a fire official may immediately seek a search warrant and, upon a showing of probable cause specific to the common area sought to be searched that a criminal fire code violation exists in those areas, a court of competent jurisdiction shall issue a warrant allowing a search of the common areas in which the violation is alleged.

The superior court and courts of limited jurisdiction organized under Titles 3, 35, and 35A RCW have jurisdiction to issue such search warrants. Evidence obtained pursuant to any such search may be used in a civil or administrative enforcement action.

(3) As used in this section:

(a) "Common areas" means a common area or those areas that contain electrical, plumbing, and mechanical

equipment and facilities used for the operation of the rental building.

(b) "Fire official" means any fire official authorized to enforce the state or local fire code.

(4)(a) A search warrant may be issued by a judge of a superior court or a court of limited jurisdiction under Titles 3, 35, and 35A RCW to a code enforcement official of the state or of any county, city, or other political subdivision for the purpose of allowing the inspection of any specified dwelling unit and premises to determine the presence of an unsafe building condition or a violation of any building regulation, statute, or ordinance.

(b) A search warrant must only be issued upon application of a designated officer or employee of a county or city prosecuting or regulatory authority supported by an affidavit or declaration made under oath or upon sworn testimony before the judge, establishing probable cause that a violation of a state or local law, regulation, or ordinance regarding rental housing exists and endangers the health or safety of the tenant or adjoining neighbors. In addition, the affidavit must contain a statement that consent to inspect has been sought from the owner and the tenant but could not be obtained because the owner or the tenant either refused or failed to respond within five days, or a statement setting forth facts or circumstances reasonably justifying the failure to seek such consent. A landlord may not take or threaten to take reprisals or retaliatory action as defined in RCW 59.18.240 against a tenant who gives consent to a code enforcement official of the state or of any county, city, or other political subdivision to inspect his or her dwelling unit to determine the presence of an unsafe building condition or a violation of any building regulation, statute, or ordinance.

(c) In determining probable cause, the judge is not limited to evidence of specific knowledge, but may also consider any of the following:

- (i) The age and general condition of the premises;
- (ii) Previous violations or hazards found present in the premises;
- (iii) The type of premises;
- (iv) The purposes for which the premises are used; or
- (v) The presence of hazards or violations in and the general condition of premises near the premises sought to be inspected.

(d) Before issuing an inspection warrant, the judge shall find that the applicant has: (i) Provided written notice of the date, approximate time, and court in which the applicant will be seeking the warrant to the owner and, if the applicant reasonably believes the dwelling unit or rental property to be inspected is in the lawful possession of a tenant, to the tenant; and (ii) posted a copy of the notice on the exterior of the dwelling unit or rental property to be inspected. The judge shall also allow the owner and any tenant who appears during consideration of the application for the warrant to defend against or in support of the issuance of the warrant.

(e) All warrants must include at least the following:

- (i) The name of the agency and building official requesting the warrant and authorized to conduct an inspection pursuant to the warrant;
- (ii) A reasonable description of the premises and items to be inspected; and
- (iii) A brief description of the purposes of the inspection.

(f) An inspection warrant is effective for the time specified in the warrant, but not for a period of more than ten days unless it is extended or renewed by the judge who signed and issued the original warrant upon satisfying himself or herself that the extension or renewal is in the public interest. The inspection warrant must be executed and returned to the judge by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of the time specified in the warrant, the warrant, unless executed, is void.

(g) An inspection pursuant to a warrant must not be made:

(i) Between 7:00 p.m. of any day and 8:00 a.m. of the succeeding day, on Saturday or Sunday, or on any legal holiday, unless the owner or, if occupied, the tenant specifies a preference for inspection during such hours or on such a day;

(ii) Without the presence of an owner or occupant over the age of eighteen years or a person designated by the owner or occupant unless specifically authorized by a judge upon a showing that the authority is reasonably necessary to effectuate the purpose of the search warrant; or

(iii) By means of forcible entry, except that a judge may expressly authorize a forcible entry when:

(A) Facts are shown that are sufficient to create a reasonable suspicion of a violation of a state or local law or rule relating to municipal or county building, fire, safety, environmental, animal control, land use, plumbing, electrical, health, minimum housing, or zoning standards that, if the violation existed, would be an immediate threat to the health or safety of the tenant; or

(B) Facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful.

(h) Immediate execution of a warrant is prohibited, except when necessary to prevent loss of life or property.

(i) Any person who willfully refuses to permit inspection, obstructs inspection, or aids in the obstruction of an inspection of property authorized by warrant issued pursuant to this section is subject to remedial and punitive sanctions for contempt of court under chapter 7.21 RCW. Such conduct may also be subject to a civil penalty imposed by local ordinance that takes into consideration the facts and circumstances and the severity of the violation.

(5) The landlord may enter the dwelling unit without consent of the tenant in case of emergency or abandonment.

(6) The landlord shall not abuse the right of access or use it to harass the tenant, and shall provide notice before entry as provided in this subsection. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' written notice of his or her intent to enter and shall enter only at reasonable times. The notice must state the exact time and date or dates of entry or specify a period of time during that date or dates in which the entry will occur, in which case the notice must specify the earliest and latest possible times of entry. The notice must also specify the telephone number to which the tenant may communicate any objection or request to reschedule the entry. The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit at a specified time where the landlord has given at least one day's notice of intent to enter to exhibit the dwelling unit to prospective or actual purchasers or tenants. A landlord shall not unreasonably interfere

with a tenant's enjoyment of the rented dwelling unit by excessively exhibiting the dwelling unit.

(7) The landlord has no other right of access except by court order, arbitrator or by consent of the tenant.

(8) A landlord or tenant who continues to violate the rights of the tenant or landlord with respect to the duties imposed on the other as set forth in this section after being served with one written notification alleging in good faith violations of this section listing the date and time of the violation shall be liable for up to one hundred dollars for each violation after receipt of the notice. The prevailing landlord or tenant may recover costs of the suit or arbitration under this section, and may also recover reasonable attorneys' fees.

(9) Nothing in this section is intended to (a) abrogate or modify in any way any common law right or privilege or (b) affect the common law as it relates to a local municipality's right of entry under emergency or exigent circumstances. [2011 c 132 § 9; 2010 c 148 § 3; 2002 c 263 § 1. Prior: 1989 c 342 § 7; 1989 c 12 § 18; 1973 1st ex.s. c 207 § 15.]

59.18.180 Tenant's failure to comply with statutory duties—Landlord to give tenant written notice of non-compliance—Landlord's remedies. (1) If the tenant fails to comply with any portion of RCW 59.18.130 or 59.18.140, and such noncompliance can (a) substantially affect the health and safety of the tenant or other tenants, or substantially increase the hazards of fire or accident, and (b) be remedied by repair, replacement of a damaged item, or cleaning, the tenant shall comply within thirty days after written notice by the landlord specifying the noncompliance, or, in the case of emergency as promptly as conditions require. If the tenant fails to remedy the noncompliance within that period the landlord may enter the dwelling unit and cause the work to be done and submit an itemized bill of the actual and reasonable cost of repair, to be payable on the next date when periodic rent is due, or on terms mutually agreed to by the landlord and tenant, or immediately if the rental agreement has terminated. The tenant shall have a defense to an unlawful detainer action filed solely on this ground if it is determined at the hearing authorized under the provisions of chapter 59.12 RCW that the tenant is in substantial compliance with the provisions of this section, or if the tenant remedies the noncomplying condition within the thirty day period provided for above or any shorter period determined at the hearing to have been required because of an emergency: PROVIDED, That if the defective condition is remedied after the commencement of an unlawful detainer action, the tenant may be liable to the landlord for statutory costs and reasonable attorneys' fees.

(2) Any other substantial noncompliance by the tenant of RCW 59.18.130 or 59.18.140 constitutes a ground for commencing an action in unlawful detainer in accordance with chapter 59.12 RCW. A landlord may commence such action at any time after written notice pursuant to chapter 59.12 RCW.

(3) If drug-related activity is alleged to be a basis for termination of tenancy under RCW 59.18.130(6), 59.12.030(5), or 59.20.140(5), the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action.

(4) If criminal activity on the premises as described in RCW 59.18.130(8) is alleged to be the basis for termination of the tenancy, and the tenant is arrested as a result of this activity, then the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action against the tenant who was arrested for this activity.

(5) If gang-related activity, as prohibited under RCW 59.18.130(9), is alleged to be the basis for termination of the tenancy, then the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action in accordance with chapter 59.12 RCW, and a landlord may commence such an action at any time after written notice under chapter 59.12 RCW.

(6) A landlord may not be held liable in any cause of action for bringing an unlawful detainer action against a tenant for drug-related activity, for creating an imminent hazard to the physical safety of others, or for engaging in gang-related activity that renders people in at least two or more dwelling units or residences insecure in life or the use of property or that injures or endangers the safety or health of people in at least two or more dwelling units or residences under this section, if the unlawful detainer action was brought in good faith. Nothing in this section shall affect a landlord's liability under RCW 59.18.380 to pay all damages sustained by the tenant should the writ of restitution be wrongfully sued out. [2011 c 132 § 10; 1998 c 276 § 3; 1992 c 38 § 3; 1988 c 150 § 7; 1973 1st ex.s. c 207 § 18.]

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

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.18.230 Waiver of chapter provisions prohibited—Provisions prohibited from rental agreement—Distress for rent abolished—Detention of personal property for rent—Remedies. (1) Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived except as provided in RCW 59.18.360 and shall be deemed against public policy and shall be unenforceable. Such unenforceability shall not affect other provisions of the agreement which can be given effect without them.

(2) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forgo rights or remedies under this chapter; or

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) Agrees to pay the landlord's attorneys' fees, except as authorized in this chapter; or

(d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith; or

(e) And landlord have agreed to a particular arbitrator at the time the rental agreement is entered into.

(3) A provision prohibited by subsection (2) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him or her to be prohibited, the tenant may recover actual damages sustained by him or her, statutory

damages not to exceed five hundred dollars, costs of suit, and reasonable attorneys' fees.

(4) The common law right of the landlord of distress for rent is hereby abolished for property covered by this chapter. Any provision in a rental agreement creating a lien upon the personal property of the tenant or authorizing a distress for rent is null and void and of no force and effect. Any landlord who takes or detains the personal property of a tenant without the specific written consent of the tenant to such incident of taking or detention, and who, after written demand by the tenant for the return of his or her personal property, refuses to return the same promptly shall be liable to the tenant for the value of the property retained, actual damages, and if the refusal is intentional, may also be liable for damages of up to five hundred dollars per day but not to exceed five thousand dollars, for each day or part of a day that the tenant is deprived of his or her property. The prevailing party may recover his or her costs of suit and a reasonable attorneys' fee.

In any action, including actions pursuant to chapters 7.64 or 12.28 RCW, brought by a tenant or other person to recover possession of his or her personal property taken or detained by a landlord in violation of this section, the court, upon motion and after notice to the opposing parties, may waive or reduce any bond requirements where it appears to be to the satisfaction of the court that the moving party is proceeding in good faith and has, prima facie, a meritorious claim for immediate delivery or redelivery of said property. [2011 c 132 § 11; 2010 c 8 § 19024; 1989 c 342 § 8; 1983 c 264 § 4; 1973 1st ex.s. c 207 § 23.]

59.18.253 Deposit to secure occupancy by tenant—Landlord's duties—Violation. (1) It shall be unlawful for a landlord to require a fee or deposit from a prospective tenant for the privilege of being placed on a waiting list to be considered as a tenant for a dwelling unit.

(2) A landlord who charges a prospective tenant a fee or deposit to hold a dwelling unit or secure that the prospective tenant will move into a dwelling unit, after the dwelling unit has been offered to the prospective tenant, must provide the prospective tenant with a receipt for the fee or deposit, together with a written statement of the conditions, if any, under which the fee or deposit may be retained, immediately upon payment of the fee or deposit.

(3)(a) If the prospective tenant does occupy the dwelling unit, then the landlord must credit the amount of the fee or deposit to the tenant's first month's rent or to the tenant's security deposit. If the prospective tenant does not occupy the dwelling unit, then the landlord may keep up to the full amount of any fee or deposit that was paid by the prospective tenant to secure the tenancy, so long as it is in accordance with the written statement of conditions furnished to the prospective tenant at the time the fee or deposit was charged.

(b) A fee or deposit to hold a dwelling unit or secure that the prospective tenant will move into a dwelling unit under this subsection does not include any cost charged by a landlord to use a tenant screening service or obtain background information on a prospective tenant.

(c) A portion of the fee or deposit may not be withheld if the dwelling unit fails a tenant-based rental assistance program inspection by a qualified inspector as defined in RCW

59.18.030. If the inspection does not occur within ten days from the date of collection of the fee or deposit or a longer period of time that the landlord and tenant may agree upon, the landlord may notify the tenant that the dwelling unit will no longer be held. The landlord shall promptly return the fee or deposit to the prospective tenant after the landlord is notified that the dwelling unit failed the inspection or the landlord has notified the tenant that the dwelling unit will no longer be held. The landlord complies with this section by promptly depositing the fee or deposit in the United States mail properly addressed with first-class postage prepaid.

(4) In any action brought for a violation of this section, a landlord may be liable for the amount of the fee or deposit charged. In addition, any landlord who violates this section may be liable to the prospective tenant for an amount not to exceed two times the fee or deposit. The prevailing party may also recover court costs and a reasonable attorneys' fee. [2011 c 132 § 12; 1991 c 194 § 2.]

Findings—1991 c 194: "The legislature finds that tenant application fees often have the effect of excluding low-income people from applying for housing because many low-income people cannot afford these fees in addition to the rent and other deposits which may be required. The legislature further finds that application fees are frequently not returned to unsuccessful applicants for housing, which creates a hardship on low-income people. The legislature therefore finds and declares that it is the policy of the state that certain tenant application fees should be prohibited and guidelines should be established for the imposition of other tenant application fees.

The legislature also finds that it is important to both landlords and tenants that consumer information concerning prospective tenants is accurate. Many tenants are unaware of their rights under federal fair credit reporting laws to dispute information that may be inaccurate. The legislature therefore finds and declares that it is the policy of the state for prospective tenants to be informed of their rights to dispute information they feel is inaccurate in order to help prevent denials of housing based upon incorrect information." [1991 c 194 § 1.]

59.18.260 Moneys paid as deposit or security for performance by tenant—Written rental agreement to specify terms and conditions for retention by landlord—Written checklist required. If any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a lease or rental agreement, the lease or rental agreement shall be in writing and shall include the terms and conditions under which the deposit or portion thereof may be withheld by the landlord upon termination of the lease or rental agreement. If all or part of the deposit may be withheld to indemnify the landlord for damages to the premises for which the tenant is responsible, the rental agreement shall be in writing and shall so specify. No deposit may be collected by a landlord unless the rental agreement is in writing and a written checklist or statement specifically describing the condition and cleanliness of or existing damages to the premises and furnishings, including, but not limited to, walls, floors, countertops, carpets, drapes, furniture, and appliances, is provided by the landlord to the tenant at the commencement of the tenancy. The checklist or statement shall be signed and dated by the landlord and the tenant, and the tenant shall be provided with a copy of the signed checklist or statement. No such deposit shall be withheld on account of normal wear and tear resulting from ordinary use of the premises. The tenant has the right to request one free replacement copy of the written checklist. If the landlord collects a deposit without providing a written checklist at the commencement of the tenancy, the landlord is liable to the

tenant for the amount of the deposit, and the prevailing party may recover court costs and reasonable attorneys' fees. This section does not limit the tenant's right to recover moneys paid as damages or security under RCW 59.18.280. [2011 c 132 § 13; 1983 c 264 § 6; 1973 1st ex.s. c 207 § 26.]

59.18.270 Moneys paid as deposit or security for performance by tenant—Deposit by landlord in trust account—Receipt—Remedies under foreclosure—Claims. All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a lease or rental agreement shall promptly be deposited by the landlord in a trust account, maintained by the landlord for the purpose of holding such security deposits for tenants of the landlord, in a financial institution as defined by RCW 30.22.041 or licensed escrow agent located in Washington. Unless otherwise agreed in writing, the landlord shall be entitled to receipt of interest paid on such trust account deposits. The landlord shall provide the tenant with a written receipt for the deposit and shall provide written notice of the name and address and location of the depository and any subsequent change thereof. If during a tenancy the status of landlord is transferred to another, any sums in the deposit trust account affected by such transfer shall simultaneously be transferred to an equivalent trust account of the successor landlord, and the successor landlord shall promptly notify the tenant of the transfer and of the name, address, and location of the new depository. If, during the tenancy, the tenant's dwelling unit is foreclosed upon and the tenant's deposit is not transferred to the successor after the foreclosure sale or other transfer of the property from the foreclosed-upon owner to a successor, the foreclosed-upon owner shall promptly refund the full deposit to the tenant immediately after the foreclosure sale or transfer. If the foreclosed-upon owner does not either immediately refund the full deposit to the tenant or transfer the deposit to the successor, the foreclosed-upon owner is liable to the tenant for damages up to two times the amount of the deposit. In any action brought by the tenant to recover the deposit, the prevailing party is entitled to recover the costs of suit or arbitration, including reasonable attorneys' fees. The tenant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled. [2011 c 132 § 14; 2004 c 136 § 1; 1975 1st ex.s. c 233 § 1; 1973 1st ex.s. c 207 § 27.]

59.18.285 Nonrefundable fees not to be designated as deposit—Written rental agreement required—Remedies. No moneys paid to the landlord which are nonrefundable may be designated as a deposit or as part of any deposit. If any moneys are paid to the landlord as a nonrefundable fee, the rental agreement shall be in writing and shall clearly specify that the fee is nonrefundable. If the landlord fails to provide a written rental agreement, the landlord is liable to the tenant for the amount of any fees collected as nonrefundable fees. If the written rental agreement fails to specify that the fee is nonrefundable, the fee must be treated as a refundable deposit under RCW 59.18.260, 59.18.270, and 59.18.280. [2011 c 132 § 15; 1983 c 264 § 5.]

59.18.310 Default in rent—Abandonment—Liability of tenant—Landlord's remedies—Sale of tenant's property by landlord. If the tenant defaults in the payment of rent and reasonably indicates by words or actions the intention not to resume tenancy, the tenant shall be liable for the following for such abandonment: PROVIDED, That upon learning of such abandonment of the premises the landlord shall make a reasonable effort to mitigate the damages resulting from such abandonment:

(1) When the tenancy is month-to-month, the tenant shall be liable for the rent for the thirty days following either the date the landlord learns of the abandonment, or the date the next regular rental payment would have become due, whichever first occurs.

(2) When the tenancy is for a term greater than month-to-month, the tenant shall be liable for the lesser of the following:

- (a) The entire rent due for the remainder of the term; or
- (b) All rent accrued during the period reasonably necessary to rerent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior agreement, plus actual costs incurred by the landlord in re-renting the premises together with statutory court costs and reasonable attorneys' fees.

In the event of such abandonment of tenancy and an accompanying default in the payment of rent by the tenant, the landlord may immediately enter and take possession of any property of the tenant found on the premises and may store the same in any reasonably secure place. A landlord shall make reasonable efforts to provide the tenant with a notice containing the name and address of the landlord and the place where the property is stored and informing the tenant that a sale or disposition of the property shall take place pursuant to this section, and the date of the sale or disposal, and further informing the tenant of the right under RCW 59.18.230 to have the property returned prior to its sale or disposal. The landlord's efforts at notice under this subsection shall be satisfied by the mailing by first-class mail, postage prepaid, of such notice to the tenant's last known address and to any other address provided in writing by the tenant or actually known to the landlord where the tenant might receive the notice. The landlord shall return the property to the tenant after the tenant has paid the actual or reasonable drayage and storage costs whichever is less if the tenant makes a written request for the return of the property before the landlord has sold or disposed of the property. After forty-five days from the date the notice of such sale or disposal is mailed or personally delivered to the tenant, the landlord may sell or dispose of such property, including personal papers, family pictures, and keepsakes. The landlord may apply any income derived therefrom against moneys due the landlord, including actual or reasonable costs whichever is less of drayage and storage of the property. If the property has a cumulative value of two hundred fifty dollars or less, the landlord may sell or dispose of the property in the manner provided in this section, except for personal papers, family pictures, and keepsakes, after seven days from the date the notice of sale or disposal is mailed or personally delivered to the tenant: PROVIDED, That the landlord shall make reasonable efforts, as defined in this section, to notify the tenant. Any excess income derived from the sale of such property

under this section shall be held by the landlord for the benefit of the tenant for a period of one year from the date of sale, and if no claim is made or action commenced by the tenant for the recovery thereof prior to the expiration of that period of time, the balance shall be the property of the landlord, including any interest paid on the income. [2011 c 132 § 16; 1991 c 220 § 1; 1989 c 342 § 10; 1983 c 264 § 8; 1973 1st ex.s. c 207 § 31.]

59.18.312 Writ of restitution—Storage and sale of tenant’s property—Use of proceeds from sale—Service by sheriff, form. (1) A landlord shall, upon the execution of a writ of restitution by the sheriff, enter and take possession of any property of the tenant found on the premises. The landlord may store the property in any reasonably secure place, including the premises, and sell or dispose of the property as provided under subsection (3) of this section. The landlord must store the property if the tenant serves a written request to do so on the landlord or the landlord’s representative by any of the methods described in RCW 59.18.365 no later than three days after service of the writ. A landlord may elect to store the property without such a request unless the tenant or the tenant’s representative objects to the storage of the property. If the tenant or the tenant’s representative objects to the storage of the property or the landlord elects not to store the property because the tenant has not served a written request on the landlord to do so, the property shall be deposited upon the nearest public property and may not be stored by the landlord. If the landlord knows that the tenant is a person with a disability as defined in RCW 49.60.040 (as amended by chapter 317, Laws of 2007) and the disability impairs or prevents the tenant or the tenant’s representative from making a written request for storage, it must be presumed that the tenant has requested the storage of the property as provided in this section unless the tenant objects in writing.

(2) Property stored under this section shall be returned to the tenant after the tenant has paid the actual or reasonable drayage and storage costs, whichever is less, or until it is sold or disposed of by the landlord in accordance with subsection (3) of this section.

(3) Prior to the sale of property stored pursuant to this section with a cumulative value of over two hundred fifty dollars, the landlord shall notify the tenant of the pending sale. After thirty days from the date the notice of the sale is mailed or personally delivered to the tenant’s last known address, the landlord may sell the property, including personal papers, family pictures, and keepsakes, and dispose of any property not sold.

If the property that is being stored has a cumulative value of two hundred fifty dollars or less, then the landlord may sell or dispose of the property in the manner provided in this section, except for personal papers, family pictures, and keepsakes. Prior to the sale or disposal of property stored pursuant to this section with a cumulative value of two hundred fifty dollars or less, the landlord shall notify the tenant of the pending sale or disposal. The notice shall either be mailed to the tenant’s last known address or personally delivered to the tenant. After seven days from the date the notice is mailed or delivered to the tenant, the landlord may sell or dispose of the property.

The landlord may apply any income derived from the sale of the tenant’s property against moneys due the landlord for drayage and storage of the property. The amount of sale proceeds that the landlord may apply towards such costs may not exceed the actual or reasonable costs for drayage and storage of the property, whichever is less. Any excess income derived from the sale of such property shall be held by the landlord for the benefit of the tenant for a period of one year from the date of the sale. If no claim is made or action commenced by the tenant for the recovery of the excess income prior to the expiration of that period of time, then the balance shall be treated as abandoned property and deposited by the landlord with the department of revenue pursuant to chapter 63.29 RCW.

(4) Nothing in this section shall be construed as creating a right of distress for rent.

(5) When serving a tenant with a writ of restitution pursuant to RCW 59.12.100 and 59.18.410, the sheriff shall provide written notice to the tenant that: (a) Upon execution of the writ, the landlord must store the tenant’s property only if the tenant serves a written request on the landlord to do so no later than three days after service of the writ; (b) the notice to the landlord requesting storage may be served by personally delivering or mailing a copy of the request to the landlord at the address identified in, or by facsimile to the facsimile number listed on, the form described under subsection (6) of this section; (c) if the tenant has not made such a written request to the landlord, the landlord may elect to either store the tenant’s property or place the tenant’s property on the nearest public property unless the tenant objects; (d) if the property is stored, it may not be returned to the tenant unless the tenant pays the actual or reasonable costs of drayage and storage, whichever is less, within thirty days; (e) if the tenant or the tenant’s representative objects to storage of the property, it will not be stored but will be placed on the nearest public property; and (f) the landlord may sell or otherwise dispose of the property as provided in subsection (3) of this section if the landlord provides written notice to the tenant first.

(6) When serving a tenant with a writ of restitution under subsection (5) of this section, the sheriff shall also serve the tenant with a form provided by the landlord that can be used to request the landlord to store the tenant’s property, which must be substantially in the following form:

REQUEST FOR STORAGE OF PERSONAL PROPERTY

.....
Name of Plaintiff

.....
Name(s) of Tenant(s)

I/we hereby request the landlord to store our personal property. I/we understand that I/we am/are responsible for the actual or reasonable costs of moving and storing the property, whichever is less. If I/we fail to pay these costs, the landlord may sell or dispose of the property pursuant to and within the time frame permitted under RCW 59.18.312(3).

Any notice of sale required under RCW 59.18.312(3) must be sent to the tenants at the following address:

.....
.....
.....

IF NO ADDRESS IS PROVIDED, NOTICE OF SALE WILL BE SENT TO THE LAST KNOWN ADDRESS OF THE TENANT(S)

Dated:

.....
Tenant-Print Name

.....
Tenant-Print Name

This notice may be delivered or mailed to the landlord or the landlord’s representative at the following address:

.....
.....
.....

This notice may also be served by facsimile to the landlord or the landlord’s representative at:

.....
Facsimile Number

IMPORTANT

IF YOU WANT YOUR LANDLORD TO STORE YOUR PROPERTY, THIS WRITTEN REQUEST MUST BE RECEIVED BY THE LANDLORD NO LATER THAN THREE (3) DAYS AFTER THE SHERIFF SERVES THE WRIT OF RESTITUTION. YOU SHOULD RETAIN PROOF OF SERVICE.

[2011 c 132 § 17; 2008 c 43 § 1; 1992 c 38 § 8.]

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

59.18.380 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Answer—Order—Stay—Bond. At the time and place fixed for the hearing of plaintiff’s motion for a writ of restitution, the defendant, or any person in possession or claiming possession of the property, may answer, orally or in writing, and assert any legal or equitable defense or set-off arising out of the tenancy. If the answer is oral the substance thereof shall be endorsed on the complaint by the court. The court shall examine the parties and witnesses orally to ascertain the merits of the complaint and answer, and if it shall appear that the plaintiff has the right to be restored to possession of the property, the court shall enter an order directing the issuance of a writ of restitution, returnable ten days after its date, restoring to the plaintiff possession of the property and if it shall appear to the court that there is no substantial issue of material fact of the right of the plaintiff to be granted other relief as prayed

for in the complaint and provided for in this chapter, the court may enter an order and judgment granting so much of such relief as may be sustained by the proof, and the court may grant such other relief as may be prayed for in the plaintiff’s complaint and provided for in this chapter, then the court shall enter an order denying any relief sought by the plaintiff for which the court has determined that the plaintiff has no right as a matter of law: PROVIDED, That within three days after the service of the writ of restitution issued prior to final judgment, the defendant, or person in possession of the property, may, in any action for the recovery of possession of the property for failure to pay rent, stay the execution of the writ pending final judgment by paying into court or to the plaintiff, as the court directs, all rent found to be due, and in addition by paying, on a monthly basis pending final judgment, an amount equal to the monthly rent called for by the lease or rental agreement at the time the complaint was filed: PROVIDED FURTHER, That before any writ shall issue prior to final judgment the plaintiff shall execute to the defendant and file in the court a bond in such sum as the court may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his or her action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he or she may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out. The court shall also enter an order directing the parties to proceed to trial on the complaint and answer in the usual manner.

If it appears to the court that the plaintiff should not be restored to possession of the property, the court shall deny plaintiff’s motion for a writ of restitution and enter an order directing the parties to proceed to trial within thirty days on the complaint and answer. If it appears to the court that there is a substantial issue of material fact as to whether or not the plaintiff is entitled to other relief as is prayed for in plaintiff’s complaint and provided for in this chapter, or that there is a genuine issue of a material fact pertaining to a legal or equitable defense or set-off raised in the defendant’s answer, the court shall grant or deny so much of plaintiff’s other relief sought and so much of defendant’s defenses or set-off claimed, as may be proper. [2011 c 132 § 18; 2010 c 8 § 19032; 1973 1st ex.s. c 207 § 39.]

59.18.390 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Service—Defendant’s bond. (1) The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his or her agent, or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of the court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of the premises, together with all damages which the court theretofore has awarded to the plaintiff as provided in this chapter, and also

all the costs of the action. If the writ of restitution was issued after alternative service provided for in RCW 59.18.055, the court shall determine the amount of the bond after considering the rent claimed and any other factors the court deems relevant. The plaintiff, his or her agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon the bond before the bond shall be approved by the clerk. After the issuance of a writ of restitution, acceptance of a payment by the landlord or plaintiff that only partially satisfies the judgment will not invalidate the writ unless pursuant to a written agreement executed by both parties. The eviction will not be postponed or stopped unless a copy of that written agreement is provided to the sheriff. It is the responsibility of the tenant or defendant to ensure a copy of the agreement is provided to the sheriff. Upon receipt of the agreement the sheriff will cease action unless ordered to do otherwise by the court. The writ of restitution and the notice that accompanies the writ of restitution required under RCW 59.18.312 shall conspicuously state in bold face type, all capitals, not less than twelve points information about partial payments as set forth in subsection (2) of this section. If the writ of restitution has been based upon a finding by the court that the tenant, subtenant, sublessee, or a person residing at the rental premises has engaged in drug-related activity or has allowed any other person to engage in drug-related activity at those premises with his or her knowledge or approval, neither the tenant, the defendant, nor a person in possession of the premises shall be entitled to post a bond in order to retain possession of the premises. The writ may be served by the sheriff, in the event he or she shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of the writ in a conspicuous place upon the premises: PROVIDED, That the sheriff shall not require any bond for the service or execution of the writ. The sheriff shall be immune from all civil liability for serving and enforcing writs of restitution unless the sheriff is grossly negligent in carrying out his or her duty.

(2) The notice accompanying a writ of restitution required under RCW 59.18.312 shall be substantially similar to the following:

IMPORTANT NOTICE - PARTIAL PAYMENTS

YOUR LANDLORD'S ACCEPTANCE OF A PARTIAL PAYMENT FROM YOU AFTER SERVICE OF THIS WRIT OF RESTITUTION WILL NOT AUTOMATICALLY POSTPONE OR STOP YOUR EVICTION. IF YOU HAVE A WRITTEN AGREEMENT WITH YOUR LANDLORD THAT THE EVICTION WILL BE POSTPONED OR STOPPED, IT IS YOUR RESPONSIBILITY TO PROVIDE A COPY OF THE AGREEMENT TO THE SHERIFF. THE SHERIFF WILL NOT CEASE ACTION UNLESS YOU PROVIDE A COPY OF THE AGREEMENT. AT THE DIRECTION OF THE COURT THE SHERIFF MAY TAKE FURTHER ACTION.

[2011 c 132 § 19; 1997 c 255 § 1; 1989 c 342 § 11; 1988 c 150 § 3; 1973 1st ex.s. c 207 § 40.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.18.410 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Judgment—Execution. If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement, or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages arising out of the tenancy occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer, or unlawful detainer for the amount of damages thus assessed and for the rent, if any, found due, and the court may award statutory costs and reasonable attorney's fees. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in the continuance of the tenancy, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his or her tenancy; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required. This section also applies if the writ of restitution is issued pursuant to a final judgment entered after a show cause hearing conducted in accordance with RCW 59.18.380. [2011 c 132 § 20; 2010 c 8 § 19033; 1973 1st ex.s. c 207 § 42.]

Chapter 59.20 RCW

MANUFACTURED/MOBILE HOME LANDLORD-TENANT ACT

Sections

- 59.20.134 Written receipts for payments made by tenant.
- 59.20.190 Health and sanitation standards—Penalties.
- 59.20.300 Manufactured/mobile home communities—Notice of sale.

59.20.134 Written receipts for payments made by tenant. (1) A landlord shall provide a written receipt for any payment made by a tenant in the form of cash.

(2) A landlord shall provide, upon the request of a tenant, a written receipt for any payments made by the tenant in a form other than cash. [2011 c 168 § 1.]

59.20.190 Health and sanitation standards—Penalties. All state board of health rules applicable to the health and sanitation of mobile home parks shall be enforced by the city, county, city-county, or district health officer of the jurisdiction in which the mobile home park is located, upon notice of a violation to such health officer. Failure to remedy the violation after enforcement efforts are made may result in a fine being imposed on the park owner, or tenant as may be applicable, by the enforcing governmental body of up to one hundred dollars per day, depending on the degree of risk of injury or illness to persons in or around the park. [2011 c 27 § 2; 1988 c 126 § 1; 1981 c 304 § 22.]

Additional notes found at www.leg.wa.gov

59.20.300 Manufactured/mobile home communities—Notice of sale. (1) A landlord must provide a written notice of sale of a manufactured/mobile home community by certified mail or personal delivery to:

- (a) Each tenant of the manufactured/mobile home community;
 - (b) The officers of any known qualified tenant organization;
 - (c) The office of mobile/manufactured home relocation assistance;
 - (d) The local government within whose jurisdiction all or part of the manufactured/mobile home community exists;
 - (e) The housing authority within whose jurisdiction all or part of the manufactured/mobile home community exists; and
 - (f) The Washington state housing finance commission.
- (2) A notice of sale must include:
- (a) A statement that the landlord intends to sell the manufactured/mobile home community; and
 - (b) The contact information of the landlord or landlord's agent who is responsible for communicating with the qualified tenant organization or eligible organization regarding the sale of the property. [2011 c 158 § 5; 2008 c 116 § 4.]

Transfer of residual funds to manufactured home installation training account—2011 c 158: See note following RCW 43.22A.100.

Findings—Intent—2008 c 116: "(1) The legislature finds that:

- (a) Manufactured/mobile home communities provide a significant source of homeownership opportunities for Washington residents. However, the increasing closure and conversion of manufactured/mobile home communities to other uses, combined with increasing mobile home lot rents, low vacancy rates in existing manufactured/mobile home communities, and the extremely high cost of moving homes when manufactured/mobile home communities close, increasingly make manufactured/mobile home community living insecure for manufactured/mobile home tenants.
- (b) Many tenants who reside in manufactured/mobile home communities are low-income households and senior citizens and are, therefore, those residents most in need of reasonable security in the siting of their manufactured/mobile homes because of the adverse impacts on the health, safety, and welfare of tenants forced to move due to closure, change of use, or discontinuance of manufactured/mobile home communities.
- (c) The preservation of manufactured/mobile home communities:
 - (i) Is a more economical alternative than providing new replacement housing units for tenants who are displaced from closing manufactured/mobile home communities;
 - (ii) Is a strategy by which all local governments can meet the affordable housing needs of their residents;
 - (iii) Is a strategy by which local governments planning under RCW 36.70A.040 may meet the housing element of their comprehensive plans as it relates to the provision of housing affordable to all economic sectors; and
 - (iv) Should be a goal of all housing authorities and local governments.
- (d) The loss of manufactured/mobile home communities should not result in a net loss of affordable housing, thus compromising the ability of local governments to meet the affordable housing needs of its residents and

the ability of these local governments planning under RCW 36.70A.040 to meet affordable housing goals under chapter 36.70A RCW.

(e) The closure of manufactured/mobile home communities has serious environmental, safety, and financial impacts, including:

- (i) Homes that cannot be moved to other locations add to Washington's landfills;
- (ii) Homes that are abandoned might attract crime; and
- (iii) Vacant homes that will not be reoccupied need to be tested for asbestos and lead, and these toxic materials need to be removed prior to demolition.

(f) The self-governance aspect of tenants owning manufactured/mobile home communities results in a lesser usage of police resources as tenants experience fewer societal conflicts when they own the real estate as well as their homes.

(g) Housing authorities, by their creation and purpose, are the public body corporate and politic of the city or county responsible for addressing the availability of safe and sanitary dwelling accommodations available to persons of low income, senior citizens, and others.

(2) It is the intent of the legislature to encourage and facilitate the preservation of existing manufactured/mobile home communities in the event of voluntary sales of manufactured/mobile home communities and, to the extent necessary and possible, to involve manufactured/mobile home community tenants or an eligible organization representing the interests of tenants, such as a nonprofit organization, housing authority, or local government, in the preservation of manufactured/mobile home communities." [2008 c 116 § 1.]

Severability—2008 c 116: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 116 § 8.]

Chapter 59.21 RCW

MOBILE HOME RELOCATION ASSISTANCE

Sections

59.21.050 Relocation fund—Administration—Tenant's application—Form.

59.21.050 Relocation fund—Administration—Tenant's application—Form. (1) The existence of the mobile home park relocation fund in the custody of the state treasurer is affirmed. Expenditures from the fund may be used only for relocation assistance awarded under this chapter. Only the director or the director's designee may authorize expenditures from the fund. All relocation payments to tenants shall be made from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(2) A park tenant is eligible for assistance under this chapter only after an application is submitted by that tenant or an organization acting on the tenant's account under RCW 59.21.021(4) on a form approved by the director which shall include:

- (a) For those persons who maintained ownership of and relocated their homes or removed their homes from the park:
 - (i) A copy of the notice from the park-owner, or other adequate proof, that the tenancy is terminated due to closure of the park or its conversion to another use;
 - (ii) a copy of the rental agreement then in force, or other proof that the applicant was a tenant at the time of notice of closure;
 - (iii) a copy of the contract for relocating the home which includes the date of relocation, or other proof of actual relocation expenses incurred on a date certain; and
 - (iv) a statement of any other available assistance;
- (b) For those persons who sold their homes and incurred no relocation expenses:
 - (i) A copy of the notice from the

park-owner, or other adequate proof, that the tenancy is terminated due to closure of the park or its conversion to another use; (ii) a copy of the rental agreement then in force, or other proof that the applicant was a tenant at the time of notice of closure; and (iii) a copy of the record of title transfer issued by the department of licensing when the tenant sold the home rather than relocate it due to park closure or conversion.

(3) The department may deduct a percentage amount of the fee collected under RCW 46.17.155 for administration expenses incurred by the department. [2011 c 158 § 7; 2010 c 161 § 1149; 2002 c 257 § 4; 1998 c 124 § 5; 1995 c 122 § 9; 1991 sp.s. c 13 § 74; 1991 c 327 § 12; 1990 c 171 § 5; 1989 c 201 § 5.]

Transfer of residual funds to manufactured home installation training account—2011 c 158: See note following RCW 43.22A.100.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective date—2002 c 257: See note following RCW 59.21.010.

Additional notes found at www.leg.wa.gov

Chapter 59.22 RCW

OFFICE OF MOBILE/MANUFACTURED HOME RELOCATION ASSISTANCE— RESIDENT-OWNED MOBILE HOME PARKS

(Formerly: Office of manufactured housing—
Resident-owned mobile home parks)

Sections

59.22.010	Legislative findings.
59.22.020	Definitions.
59.22.050	Office of mobile/manufactured home relocation assistance— Duties.
59.22.070	Repealed.
59.22.090	Repealed.

59.22.010 Legislative findings. (1) The legislature finds:

(a) That manufactured housing and mobile home parks provide a source of low-cost housing to the low income, elderly, poor and infirmed, without which they could not afford private housing; but rising costs of mobile home park development and operation, as well as turnover in ownership, has resulted in mobile home park living becoming unaffordable to the low income, elderly, poor and infirmed, resulting in increased numbers of homeless persons, and persons who must look to public housing and public programs, increasing the burden on the state to meet the housing needs of its residents;

(b) That state government can play a vital role in addressing the problems confronted by mobile home park residents by providing assistance which makes it possible for mobile home park residents to acquire the mobile home parks in which they reside and convert them to resident ownership; and

(c) That to accomplish this purpose, information and technical support shall be made available through the department subject to the availability of amounts appropriated for this specific purpose.

(2) Therefore, it is the intent of the legislature, in order to maintain low-cost housing in mobile home parks to benefit the low income, elderly, poor and infirmed, to encourage and facilitate the conversion of mobile home parks to resident

ownership, to protect low-income mobile home park residents from both physical and economic displacement, to obtain a high level of private financing for mobile home park conversions, and to help establish acceptance for resident-owned mobile home parks in the private market. [2011 c 158 § 1; 1995 c 399 § 154; 1987 c 482 § 1.]

Transfer of residual funds to manufactured home installation training account—2011 c 158: See note following RCW 43.22A.100.

59.22.020 Definitions. The following definitions shall apply throughout this chapter unless the context clearly requires otherwise:

(1) "Affordable" means that, where feasible, low-income residents should not pay more than thirty percent of their monthly income for housing costs.

(2) "Conversion costs" includes the cost of acquiring the mobile home park, the costs of planning and processing the conversion, the costs of any needed repairs or rehabilitation, and any expenditures required by a government agency or lender for the project.

(3) "Department" means the department of commerce.

(4) "Fund" or "park purchase account" means the mobile home park purchase account created pursuant to RCW 59.22.030.

(5) "Housing costs" means the total cost of owning, occupying, and maintaining a mobile home and a lot or space in a mobile home park.

(6) "Individual interest in a mobile home park" means any interest which is fee ownership or a lesser interest which entitles the holder to occupy a lot or space in a mobile home park for a period of not less than either fifteen years or the life of the holder. Individual interests in a mobile home park include, but are not limited to, the following:

(a) Ownership of a lot or space in a mobile home park or subdivision;

(b) A membership or shares in a stock cooperative, or a limited equity housing cooperative; or

(c) Membership in a nonprofit mutual benefit corporation which owns, operates, or owns and operates the mobile home park.

(7) "Landlord" shall have the same meaning as it does in RCW 59.20.030.

(8) "Low-income resident" means an individual or household who resided in the mobile home park prior to application for a loan pursuant to this chapter and with an annual income at or below eighty percent of the median income for the county of standard metropolitan statistical area of residence. Net worth shall be considered in the calculation of income with the exception of the resident's mobile/manufactured home which is used as their primary residence.

(9) "Low-income spaces" means those spaces in a mobile home park operated by a resident organization which are occupied by low-income residents.

(10) "Manufactured housing" means residences constructed on one or more chassis for transportation, and which bear an insignia issued by a state or federal regulatory agency indication compliance with all applicable construction standards of the United States department of housing and urban development.

(11) "Mobile home" shall have the same meaning as it does in RCW 43.22.335.

(12) "Mobile home lot" shall have the same meaning as it does in RCW 59.20.030.

(13) "Mobile home park" means a mobile home park, as defined in RCW 59.20.030(10), or a manufactured home park subdivision as defined by RCW 59.20.030(12) created by the conversion to resident ownership of a mobile home park.

(14) "Resident organization" means a group of mobile home park residents who have formed a nonprofit corporation, cooperative corporation, or other entity or organization for the purpose of acquiring the mobile home park in which they reside and converting the mobile home park to resident ownership. The membership of a resident organization shall include at least two-thirds of the households residing in the mobile home park at the time of application for assistance from the department.

(15) "Resident ownership" means, depending on the context, either the ownership, by a resident organization, as defined in this section, of an interest in a mobile home park which entitles the resident organization to control the operations of the mobile home park for a term of no less than fifteen years, or the ownership of individual interests in a mobile home park, or both.

(16) "Tenant" means a person who rents a mobile home lot for a term of one month or longer and owns the mobile home on the lot. [2011 c 158 § 6; 2010 c 161 § 1150. Prior: 2009 c 565 § 48; 1995 c 399 § 155; 1993 c 66 § 9; 1991 c 327 § 2; 1988 c 280 § 3; 1987 c 482 § 2.]

Transfer of residual funds to manufactured home installation training account—2011 c 158: See note following RCW 43.22A.100.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

59.22.050 Office of mobile/manufactured home relocation assistance—Duties. In order to provide general assistance to resident organizations, qualified tenant organizations, and tenants, the department shall establish an office of mobile/manufactured home relocation assistance. This office shall:

(1) Subject to the availability of amounts appropriated for this specific purpose, provide, either directly or through contracted services, technical assistance to qualified tenant organizations as defined in RCW 59.20.030 and resident organizations or persons in the process of forming a resident organization pursuant to this chapter. The office will keep records of its activities in this area.

(2) Administer the mobile home relocation assistance program established in chapter 59.21 RCW, including verifying the eligibility of tenants for relocation assistance. [2011 c 158 § 2; 2008 c 116 § 6; 2007 c 432 § 9; 1991 c 327 § 3; (2005 c 429 § 9 expired December 31, 2005); 1989 c 294 § 1; 1988 c 280 § 2.]

Transfer of residual funds to manufactured home installation training account—2011 c 158: See note following RCW 43.22A.100.

Findings—Intent—Severability—2008 c 116: See notes following RCW 59.20.300.

Registration assessments—2005 c 429: "Any amount assessed under section 7(2), chapter 429, Laws of 2005 that remains uncollected on December 31, 2005, shall be collected under the terms of section 7, chapter 429, Laws of 2005 as it existed before December 31, 2005." [2005 c 429 § 10.]

[2011 RCW Supp—page 1230]

Effective date—2005 c 429: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 2005]." [2005 c 429 § 11.]

Expiration date—2005 c 429: "Except for sections 10 and 13 of this act, this act expires December 31, 2005." [2005 c 429 § 12.]

Registration assessments—2005 c 429: "Beginning in January 2006, the state treasurer shall transfer any funds remaining in the manufactured/mobile home investigations account under section 8, chapter 429, Laws of 2005 to the mobile home affairs account under RCW 59.22.070 for the purposes under RCW 59.22.050. All funds collected by the department under section 10, chapter 429, Laws of 2005 shall be transferred to the state treasurer for deposit into the mobile home affairs account." [2005 c 429 § 13.]

59.22.070 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

59.22.090 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 59.30 RCW

MANUFACTURED/MOBILE HOME COMMUNITIES—DISPUTE RESOLUTION AND REGISTRATION

Sections

59.30.010	Findings—Purpose—Intent.
59.30.020	Definitions.
59.30.050	Registration process, fees.
59.30.060	Database.
59.30.090	Unpaid fees—Warrant—Interest—Lien.

59.30.010 Findings—Purpose—Intent. (1) The legislature finds that there are factors unique to the relationship between a manufactured/mobile home tenant and a manufactured/mobile home community landlord. Once occupancy has commenced, the difficulty and expense in moving and relocating a manufactured/mobile home can affect the operation of market forces and lead to an inequality of the bargaining position of the parties. Once occupancy has commenced, a tenant may be subject to violations of the manufactured/mobile home landlord-tenant act without an adequate remedy at law. This chapter is created for the purpose of protecting the public, fostering fair and honest competition, and regulating the factors unique to the relationship between the manufactured/mobile home tenant and the manufactured/mobile home community landlord.

(2) The legislature finds that taking legal action against a manufactured/mobile home community landlord for violations of the manufactured/mobile home landlord-tenant act can be a costly and lengthy process, and that many people cannot afford to pursue a court process to vindicate statutory rights. Manufactured/mobile home community landlords will also benefit by having access to a process that resolves disputes quickly and efficiently.

(3)(a) Therefore, it is the intent of the legislature to provide an equitable as well as a less costly and more efficient way for manufactured/mobile home tenants and manufactured/mobile home community landlords to resolve disputes, and to provide a mechanism for state authorities to quickly locate manufactured/mobile home community landlords.

(b) The legislature intends to authorize the department of revenue to register manufactured/mobile home communities and collect a registration fee.

(c) The legislature intends to authorize the attorney general to:

(i) Produce and distribute educational materials regarding the manufactured/mobile home landlord-tenant act and the manufactured/mobile home dispute resolution program created in RCW 59.30.030;

(ii) Administer the dispute resolution program by taking complaints, conducting investigations, making determinations, issuing fines and other penalties, and participating in administrative dispute resolutions, when necessary, when there are alleged violations of the manufactured/mobile home landlord-tenant act; and

(iii) Collect and annually report upon data related to disputes and violations, and make recommendations on modifying chapter 59.20 RCW, to the appropriate committees of the legislature. [2011 c 298 § 29; 2007 c 431 § 1.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Implementation—2007 c 431: "The attorney general may take the necessary steps to ensure that this act is implemented on its effective date." [2007 c 431 § 12.]

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

(1) "Complainant" means a landlord, community owner, or tenant, who has a complaint alleging a violation of chapter 59.20 RCW.

(2) "Department" means the department of revenue.

(3) "Director" means the director of revenue.

(4) "Landlord" or "community owner" means the owner of a mobile home park or a manufactured housing community and includes the agents of a landlord.

(5) "Manufactured home" means a single-family dwelling built according to the United States department of housing and urban development manufactured home construction and safety standards act, which is a national preemptive building code. A manufactured home also: (a) Includes plumbing, heating, air conditioning, and electrical systems; (b) is built on a permanent chassis; and (c) can be transported in one or more sections with each section at least eight feet wide and forty feet long when transported, or when installed on the site is three hundred twenty square feet or greater.

(6) "Manufactured/mobile home" means either a manufactured home or a mobile home.

(7) "Manufactured/mobile home lot" means a portion of a manufactured/mobile home community designated as the location of one mobile home, manufactured home, or park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home, manufactured home, or park model.

(8) "Mobile home" means a factory-built dwelling built prior to June 15, 1976, to standards other than the United States department of housing and urban development code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobile homes have not been built since the introduc-

tion of the United States department of housing and urban development manufactured home construction and safety act.

(9) "Mobile home park," "manufactured housing community," or "manufactured/mobile home community" means any real property that is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, park models, or recreational vehicles for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purposes only and is not used for year-round occupancy.

(10) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or part of the legal title to the real property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the real property.

(11) "Park model" means a recreational vehicle intended for permanent or semipermanent installation and is used as a permanent residence.

(12) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily used as a permanent residence located in a mobile home park or manufactured housing community.

(13) "Respondent" means a landlord, community owner, or tenant, alleged to have committed a violation of chapter 59.20 RCW.

(14) "Tenant" means any person, except a transient as defined in RCW 59.20.030, who rents a mobile home lot. [2011 c 298 § 30; 2007 c 431 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.050 Registration process, fees. (1) The department must annually register all manufactured/mobile home communities. Each community must be registered separately. The department must deliver by certified mail registration notifications to all known manufactured/mobile home community landlords. Registration information packets must include:

(a) Registration forms; and

(b) Registration assessment information, including registration due dates and late fees, and the collections procedures, liens, and charging costs to tenants.

(2) To apply for registration, the landlord of a manufactured/mobile home community must file with the department an application for registration on a form provided by the department and must pay a registration fee as described in subsection (3) of this section. The department may require the submission of information necessary to assist in identifying and locating a manufactured/mobile home community and other information that may be useful to the state, which must include, at a minimum:

(a) The names and addresses of the owners of the manufactured/mobile home community;

(b) The name and address of the manufactured/mobile home community;

(c) The name and address of the landlord and manager of the manufactured/mobile home community;

(d) The number of lots within the manufactured/mobile home community that are subject to chapter 59.20 RCW; and

(e) The addresses of each manufactured/mobile home lot within the manufactured/mobile home community that is subject to chapter 59.20 RCW.

(3) Each manufactured/mobile home community landlord must pay to the department:

(a) A one-time master application fee for the first year of registration and, in subsequent years, an annual master renewal application fee, as provided in RCW 19.02.075; and

(b) An annual registration assessment of ten dollars for each manufactured/mobile home that is subject to chapter 59.20 RCW within a manufactured/mobile home community. Manufactured/mobile home community landlords may charge a maximum of five dollars of this assessment to tenants. Nine dollars of the registration assessment for each manufactured/mobile home must be deposited into the manufactured/mobile home dispute resolution program account created in RCW 59.30.070 to fund the costs associated with the manufactured/mobile home dispute resolution program. The remaining one dollar must be deposited into the master license fund created in RCW 19.02.210. The annual registration assessment must be reviewed once each biennium by the department and the attorney general and may be adjusted to reasonably relate to the cost of administering this chapter. The registration assessment may not exceed ten dollars, but if the assessment is reduced, the portion allocated to the manufactured/mobile home dispute resolution program account and the master license fund must be adjusted proportionately.

(4) Initial registrations of manufactured/mobile home communities must be filed before November 1, 2007, or within three months of the availability of mobile home lots for rent within the community. The manufactured/mobile home community is subject to a delinquency fee of two hundred fifty dollars for late initial registrations. The delinquency fee must be deposited in the master license fund. Renewal registrations that are not renewed by the expiration date as assigned by the department are subject to delinquency fees under RCW 19.02.085.

(5) Thirty days after sending late fee notices to a non-complying landlord, the department may issue a warrant under RCW 59.30.090 for the unpaid registration assessment and delinquency fee. If a warrant is issued by the department under RCW 59.30.090, the department must add a penalty of ten percent of the amount of the unpaid registration assessment and delinquency fee, but not less than ten dollars. The warrant penalty must be deposited into the master license fund created in RCW 19.02.210. Chapter 82.32 RCW applies to the collection of warrants issued under RCW 59.30.090.

(6) Registration is effective on the date determined by the department, and the department must issue a registration number to each registered manufactured/mobile home community. The department must provide an expiration date, assigned by the department, to each manufactured/mobile home community who registers. [2011 c 298 § 31; 2007 c 431 § 6.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.060 Database. The department must have the capability to compile, update, and maintain the most accurate database possible of all the manufactured/mobile home communities in the state, which must include all of the information collected under RCW 59.30.050, except for the addresses of each manufactured/mobile home lot within the manufactured/mobile home community that is subject to chapter 59.20 RCW, which must be made available to the attorney general and the department of commerce in a format to be determined by a collaborative agreement between the department and the attorney general. [2011 c 298 § 32; 2007 c 431 § 7.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.090 Unpaid fees—Warrant—Interest—Lien.

(1) If any registration assessment or delinquency fee is not paid in full within thirty days after sending late fee notices to a noncomplying landlord, the department may issue a warrant in the amount of such unpaid sums, together with interest thereon from the date the warrant is issued until the date of payment.

(2) Interest must be computed on a daily basis on the amount of outstanding registration assessment and delinquency fee imposed under RCW 59.30.050 at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year. Interest must be deposited in the master license fund created in RCW 19.02.210.

(3) The department may file a copy of the warrant with the clerk of the superior court of any county of the state in which real or personal property of the owner of the manufactured/mobile home community may be found. The clerk is entitled to a filing fee under RCW 36.18.012(10). Upon filing, the clerk must enter in the judgment docket the name of the owner of the manufactured/mobile home community mentioned in the warrant and the amount of the registration assessment and delinquency fee, or portion thereof, and any increases and penalties for which the warrant is issued, and the date when the copy is filed.

(4) The amount of the warrant so docketed becomes a lien upon the title to, and interest in, all real and personal property of the owner of the manufactured/mobile home community against whom the warrant is issued the same as a judgment in a civil case duly docketed in the office of the clerk. The warrant so docketed is sufficient to support the issuance of writs of garnishment in favor of the state in the manner provided by law in the case of judgments wholly or partially unsatisfied.

(5) The lien is not superior to bona fide interests of third persons that had vested prior to the filing of the warrant. The phrase "bona fide interests of third persons" does not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as trustee for unsecured creditors of the owner of the manufactured/mobile home community mentioned in the warrant who executed the chattel or real property mortgage or the document evidencing the credit transaction. [2011 c 298 § 33.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Additional notes found at www.leg.wa.gov

Title 60

LIENS

Chapters

- 60.11** Crop liens.
- 60.28** Lien for labor, materials, taxes on public works.
- 60.56** Agister and trainer liens.
- 60.60** Lien for transportation, storage, advancements, etc.

Chapter 60.11 RCW

CROP LIENS

Sections

- 60.11.040 Statement of lien—Filing—Contents—Duration. (*Effective July 1, 2013.*)

60.11.040 Statement of lien—Filing—Contents—Duration. (*Effective July 1, 2013.*) (1) Within fourteen days of receipt of a written request from the lien debtor, or other person who provides the lien holder authorization from the lien debtor for such statement, the lien holder shall provide that person a statement described in subsection (2) of this section. Failure timely to provide the statement shall cause the lien holder to be liable to the person requesting for the attorneys' fees and costs incurred by that person to obtain the statement, together with damages incurred by that person due to the failure of the lien holder to provide the statement, including in the case of the lien debtor any loss resulting from the lien debtor's inability to obtain financing, or the increased costs thereof.

(2) The statement shall be in writing, authenticated by the claimant, and shall contain in substance the following information:

- (a) The name and address of the claimant;
 - (b) The name and address of the debtor;
 - (c) The date of commencement of performance for which the lien is claimed;
 - (d) A description of the labor services, materials, or supplies furnished;
 - (e) A description of the crop and its location to be charged with the lien sufficient for identification; and
 - (f) The signature of the claimant.
- (3) The statement need not be filed with the department of licensing.

(4) A lien for rent claimed by a landlord pursuant to this chapter shall be effective during the term of the lease for a period of up to five years. A financing statement for a landlord lien covering a lease term longer than five years may be continued in accordance with *RCW 62A.9A-515(4). A landlord who has a right to a share of the crop may place suppliers on notice by filing a financing statement in the same manner as provided for filing a financing statement for a landlord's lien. [2011 c 74 § 704; 2000 c 250 § 9A-827; 1991 c 286 § 4; 1989 c 229 § 1; 1986 c 242 § 4.]

*Reviser's note: Subsection (4) was changed to subsection (d) pursuant to RCW 1.08.015.

Chapter 60.28 RCW

LIEN FOR LABOR, MATERIALS, TAXES ON PUBLIC WORKS

Sections

- 60.28.011 Retained percentage—Public transportation projects—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—General contractor/construction manager procedure—Definitions.

60.28.011 Retained percentage—Public transportation projects—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—General contractor/construction manager procedure—Definitions. (1)(a) Except as provided in (b) of this subsection, public improvement contracts shall provide, and public bodies shall reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (i) The claims of any person arising under the contract; and (ii) the state with respect to taxes imposed pursuant to Titles 50, 51, and 82 RCW which may be due from such contractor.

(b) Public improvement contracts involving the construction, alteration, repair, or improvement of any highway, road, or street funded in whole or in part by federal transportation funds shall rely upon the contract bond as referred to in chapter 39.08 RCW for the protection and payment of: (i) The claims of any person or persons arising under the contract to the extent such claims are provided for in RCW 39.08.010; and (ii) the state with respect to taxes imposed pursuant to Titles 50, 51, and 82 RCW which may be due. The contract bond must remain in full force and effect until, at a minimum, all claims filed in compliance with chapter 39.08 RCW are resolved.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract shall have a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant shall be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained

during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, shall be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check shall be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities shall be held in escrow. Interest on the bonds and securities shall be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The public body shall accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it. This bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section shall be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new con-

tract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and shall supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.021 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue, the employment security department, the department of labor and industries, and the material suppliers and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) This subsection applies only to a public body that has contracted for the construction of a facility using the general contractor/construction manager procedure, as defined under RCW 39.10.210. If the work performed by a subcontractor on the project has been completed within the first half of the time provided in the general contractor/construction manager contract for completing the work, the public body may accept the completion of the subcontract. The public body must give public notice of this acceptance. After a forty-five day period for giving notice of liens, and compliance with the retainage release procedures in RCW 60.28.021, the public body may release that portion of the retained funds associated with the subcontract. Claims against the retained funds after the forty-five day period are not valid.

(12) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or material person who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional ser-

vices, or a work order as defined in RCW 39.10.210. [2011 c 231 § 2. Prior: 2009 c 432 § 5; 2009 c 219 § 6; prior: 2007 c 494 § 504; 2007 c 218 § 92; 2003 c 301 § 7; 2000 c 185 § 1; 1994 c 101 § 1; 1992 c 223 § 2.]

Intent—Recognition—2011 c 231: "The legislature recognizes that federal regulations include requirements that pertain to contracts funded by federal-aid highway funds. One such requirement is that states must ensure that prime contractors pay subcontractors in full by no later than thirty days after the subcontractor's work is satisfactorily completed. One option for meeting this requirement is to decline to hold retainage from prime contractors. The legislature also recognizes that retainage is currently used to ensure that claims against the contractor are resolved in a timely manner. The legislature intends that the contract bond provided by sureties on behalf of general contractors provides adequate security for claimants under the bond." [2011 c 231 § 1.]

Report—2009 c 432: See note following RCW 18.27.062.

Part headings and captions not law—Effective dates—Severability—2007 c 494: See RCW 39.10.903 through 39.10.905.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

Chapter 60.56 RCW AGISTER AND TRAINER LIENS

Sections

60.56.015 Liens perfected. (*Effective July 1, 2013.*)

60.56.015 Liens perfected. (*Effective July 1, 2013.*)
An agister who holds a lien under RCW 60.56.010 shall perfect the lien by (1) posting notice of the lien in a conspicuous location on the premises where the lien holder is keeping the animal or animals, (2) providing a copy of the posted notice to the owner of the animal or animals, and (3) providing a copy of the posted notice to any lien creditor as defined in RCW 62A.9A-102 if the amount of the agister lien is in excess of one thousand five hundred dollars. A lien creditor may be determined through a search under RCW 62A.9A-523 and 62A.9A-526. The lien holder is entitled to collect from the buyer, the seller, or the person selling on a commission basis if there is a failure to make payment to the perfected lien holder. [2011 c 74 § 703; 2001 c 32 § 7; 1993 c 53 § 3; 1989 c 67 § 2.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

Chapter 60.60 RCW LIEN FOR TRANSPORTATION, STORAGE, ADVANCEMENTS, ETC.

Sections

60.60.010 Liens created.

60.60.010 Liens created. Every person, firm, or corporation who, as a commission merchant, carrier, wharfinger, or storage warehouse operator, shall make advances for freight, transportation, wharfage, or storage upon the personal property of another, or shall carry or store such personal property, shall have a lien thereon, so long as the same remains in his or her possession, for the charges for advances, freight, transportation, wharfage, or storage, and it shall be lawful for such person, firm, or corporation to cause such property to be sold

as is herein in this chapter provided. [2011 c 336 § 822; 1927 c 144 § 1; Code 1881 § 1980; 1863 p 421 § 11; 1860 p 288 § 11; RRS § 1191.]

Title 61

MORTGAGES, DEEDS OF TRUST, AND REAL ESTATE CONTRACTS

Chapters

61.24 Deeds of trust.

Chapter 61.24 RCW DEEDS OF TRUST

Sections

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61.24.177	Deed of trust pool—Duty of servicer to maximize net present value.

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

(1) "Affiliate of beneficiary" means any entity which controls, is controlled by, or is under common control with a beneficiary.

(2) "Beneficiary" means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.

(3) "Borrower" means a person or a general partner in a partnership, including a joint venture, that is liable for all or part of the obligations secured by the deed of trust under the instrument or other document that is the principal evidence of such obligations, or the person's successors if they are liable for those obligations under a written agreement with the beneficiary.

(4) "Commercial loan" means a loan that is not made primarily for personal, family, or household purposes.

(5) "Department" means the department of commerce or its designee.

(6) "Fair value" means the value of the property encumbered by a deed of trust that is sold pursuant to a trustee's sale. This value shall be determined by the court or other appropriate adjudicator by reference to the most probable price, as of the date of the trustee's sale, which would be paid in cash or other immediately available funds, after deduction of prior liens and encumbrances with interest to the date of the trustee's sale, for which the property would sell on such date after reasonable exposure in the market under conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.

(7) "Grantor" means a person, or its successors, who executes a deed of trust to encumber the person's interest in property as security for the performance of all or part of the borrower's obligations.

(8) "Guarantor" means any person and its successors who is not a borrower and who guarantees any of the obligations secured by a deed of trust in any written agreement other than the deed of trust.

(9) "Housing counselor" means a housing counselor that has been approved by the United States department of housing and urban development or approved by the Washington state housing finance commission.

(10) "Owner-occupied" means property that is the principal residence of the borrower.

(11) "Person" means any natural person, or legal or governmental entity.

(12) "Record" and "recorded" includes the appropriate registration proceedings, in the instance of registered land.

(13) "Residential real property" means property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit.

(14) "Senior beneficiary" means the beneficiary of a deed of trust that has priority over any other deeds of trust encumbering the same residential real property.

(15) "Tenant-occupied property" means property consisting solely of residential real property that is the principal residence of a tenant subject to chapter 59.18 RCW or other building with four or fewer residential units that is the principal residence of a tenant subject to chapter 59.18 RCW.

(16) "Trustee" means the person designated as the trustee in the deed of trust or appointed under RCW 61.24.010(2).

(17) "Trustee's sale" means a nonjudicial sale under a deed of trust undertaken pursuant to this chapter. [2011 c 364 § 3; 2011 c 58 § 3. Prior: 2009 c 292 § 1; 1998 c 295 § 1.]

Reviser's note: This section was amended by 2011 c 58 § 3 and by 2011 c 364 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2011 c 58: "(1) The legislature finds and declares that:

(a) The rate of home foreclosures continues to rise to unprecedented levels, both for prime and subprime loans, and a new wave of foreclosures has occurred due to rising unemployment, job loss, and higher adjustable loan payments;

(b) Prolonged foreclosures contribute to the decline in the state's housing market, loss of property values, and other loss of revenue to the state;

(c) In recent years, the legislature has enacted procedures to help encourage and strengthen the communication between homeowners and lenders and to assist homeowners in navigating through the foreclosure process; however, Washington's nonjudicial foreclosure process does not have a mechanism for homeowners to readily access a neutral third party to assist them in a fair and timely way; and

(d) Several jurisdictions across the nation have foreclosure mediation programs that provide a cost-effective process for the homeowner and lender, with the assistance of a trained mediator, to reach a mutually acceptable resolution that avoids foreclosure.

(2) Therefore, the legislature intends to:

(a) Encourage homeowners to utilize the skills and professional judgment of housing counselors as early as possible in the foreclosure process;

(b) Create a framework for homeowners and beneficiaries to communicate with each other to reach a resolution and avoid foreclosure whenever possible; and

(c) Provide a process for foreclosure mediation when a housing counselor or attorney determines that mediation is appropriate. For mediation to be effective, the parties should attend the mediation (in person, telephonically, through an agent, or otherwise), provide the necessary documentation in a timely manner, willingly share information, actively present, discuss, and explore options to avoid foreclosure, negotiate willingly and cooperatively, maintain a professional and cooperative demeanor, cooperate with the mediator, and keep any agreements made in mediation." [2011 c 58 § 1.]

Short title—2011 c 58: "This act may be known and cited as the foreclosure fairness act." [2011 c 58 § 2.]

61.24.026 Notice to senior beneficiary of sale—Residential, owner-occupied—Proceeds of sale insufficient to pay in full obligation—Timeline—Failure of beneficiary to respond.

(1) Whenever (a) consummation of a written agreement for the purchase and sale of owner-occupied residential real property would result in contractual sale proceeds that are insufficient to pay in full the obligation owed to a senior beneficiary of a deed of trust encumbering the residential real property; and (b) the seller makes a written offer to the senior beneficiary to accept the entire net proceeds of the sale in order to facilitate closing of the purchase and sale; then the senior beneficiary must, within one hundred twenty days after the receipt of the written offer, deliver to the seller, in writing, an acceptance, rejection, or counter-offer of the seller's written offer. The senior beneficiary may determine, in its sole discretion, whether to accept, reject, or counter-offer the seller's written offer.

(2) This section applies only when the written offer to the senior beneficiary is received by the senior beneficiary prior to the issuance of a notice of default. The offer must include a copy of the purchase and sale agreement. The offer must be sent to the address of the senior beneficiary or the address of a party acting as a servicer of the obligation secured by the deed of trust.

(3) A seller has a right of action for actual monetary damages incurred as a result of the senior beneficiary's failure to comply with the requirements of subsection (1) of this section.

(4) A senior beneficiary is not liable for the actions or inactions of any other lien holder.

(5)(a) This section does not apply to deeds of trust: (i) Securing a commercial loan; (ii) securing obligations of a grantor who is not the borrower or a guarantor; or (iii) securing a purchaser's obligations under a seller-financed sale.

(b) This section does not apply to beneficiaries that are exempt from RCW 61.24.163, if enacted, or if not enacted, to beneficiaries that conduct fewer than two hundred fifty trustee sales per year.

(6) This section does not alter a beneficiary's right to issue a notice of default and does not lengthen or shorten any time period imposed or required under this chapter. [2011 c 364 § 1.]

61.24.030 Requisites to trustee's sale. It shall be requisite to a trustee's sale:

- (1) That the deed of trust contains a power of sale;
- (2) That the deed of trust contains a statement that the real property conveyed is not used principally for agricultural purposes; provided, if the statement is false on the date the deed of trust was granted or amended to include that statement, and false on the date of the trustee's sale, then the deed of trust must be foreclosed judicially. Real property is used for agricultural purposes if it is used in an operation that produces crops, livestock, or aquatic goods;
- (3) That a default has occurred in the obligation secured or a covenant of the grantor, which by the terms of the deed of trust makes operative the power to sell;
- (4) That no action commenced by the beneficiary of the deed of trust is now pending to seek satisfaction of an obligation secured by the deed of trust in any court by reason of the grantor's default on the obligation secured: PROVIDED, That (a) the seeking of the appointment of a receiver shall not constitute an action for purposes of this chapter; and (b) if a receiver is appointed, the grantor shall be entitled to any rents or profits derived from property subject to a homestead as defined in RCW 6.13.010. If the deed of trust was granted to secure a commercial loan, this subsection shall not apply to actions brought to enforce any other lien or security interest granted to secure the obligation secured by the deed of trust being foreclosed;
- (5) That the deed of trust has been recorded in each county in which the land or some part thereof is situated;
- (6) That prior to the date of the notice of trustee's sale and continuing thereafter through the date of the trustee's sale, the trustee must maintain a street address in this state where personal service of process may be made, and the trustee must maintain a physical presence and have telephone service at such address;
- (7)(a) That, for residential real property, before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust. A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.
 - (b) Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's declaration as evidence of proof required under this subsection.
 - (c) This subsection (7) does not apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW;
- (8) That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the borrower and grantor at their last known addresses by both first-class and either registered or certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on the premises, a copy of the notice, or personally served on the borrower and grantor. This notice shall contain the following information:
 - (a) A description of the property which is then subject to the deed of trust;

(b) A statement identifying each county in which the deed of trust is recorded and the document number given to the deed of trust upon recording by each county auditor or recording officer;

(c) A statement that the beneficiary has declared the borrower or grantor to be in default, and a concise statement of the default alleged;

(d) An itemized account of the amount or amounts in arrears if the default alleged is failure to make payments;

(e) An itemized account of all other specific charges, costs, or fees that the borrower, grantor, or any guarantor is or may be obliged to pay to reinstate the deed of trust before the recording of the notice of sale;

(f) A statement showing the total of (d) and (e) of this subsection, designated clearly and conspicuously as the amount necessary to reinstate the note and deed of trust before the recording of the notice of sale;

(g) A statement that failure to cure the alleged default within thirty days of the date of mailing of the notice, or if personally served, within thirty days of the date of personal service thereof, may lead to recordation, transmittal, and publication of a notice of sale, and that the property described in (a) of this subsection may be sold at public auction at a date no less than one hundred twenty days in the future;

(h) A statement that the effect of the recordation, transmittal, and publication of a notice of sale will be to (i) increase the costs and fees and (ii) publicize the default and advertise the grantor's property for sale;

(i) A statement that the effect of the sale of the grantor's property by the trustee will be to deprive the grantor of all their interest in the property described in (a) of this subsection;

(j) A statement that the borrower, grantor, and any guarantor has recourse to the courts pursuant to RCW 61.24.130 to contest the alleged default on any proper ground;

(k) In the event the property secured by the deed of trust is owner-occupied residential real property, a statement, prominently set out at the beginning of the notice, which shall state as follows:

"You should take care to protect your interest in your home. This notice of default (your failure to pay) is the first step in a process that could result in you losing your home. You should carefully review your options. For example:

Can you pay and stop the foreclosure process?

Do you dispute the failure to pay?

Can you sell your property to preserve your equity?

Are you able to refinance this loan or obligation with a new loan or obligation from another lender with payments, terms, and fees that are more affordable?

Do you qualify for any government or private homeowner assistance programs?

Do you know if filing for bankruptcy is an option? What are the pros and cons of doing so?

Do not ignore this notice; because if you do nothing, you could lose your home at a foreclosure sale. (No foreclosure sale can be held any sooner than ninety days after a notice of sale is issued and a notice of sale cannot be issued until thirty days after this notice.) Also, if you do nothing to pay what you owe, be careful of people who claim they can help you. There are many individuals and businesses that watch for the

notices of sale in order to unfairly profit as a result of borrowers' distress.

You may feel you need help understanding what to do. There are a number of professional resources available, including home loan counselors and attorneys, who may assist you. Many legal services are lower-cost or even free, depending on your ability to pay. If you desire legal help in understanding your options or handling this default, you may obtain a referral (at no charge) by contacting the county bar association in the county where your home is located. These legal referral services also provide information about lower-cost or free legal services for those who qualify. You may contact the Department of Financial Institutions or the statewide civil legal aid hotline for possible assistance or referrals"; and

(l) In the event the property secured by the deed of trust is residential real property, the name and address of the owner of any promissory notes or other obligations secured by the deed of trust and the name, address, and telephone number of a party acting as a servicer of the obligations secured by the deed of trust; and

(9) That, for owner-occupied residential real property, before the notice of the trustee's sale is recorded, transmitted, or served, the beneficiary has complied with RCW 61.24.031 and, if applicable, RCW 61.24.163. [2011 c 58 § 4; 2009 c 292 § 8. Prior: 2008 c 153 § 2; 2008 c 108 § 22; 1998 c 295 § 4; 1990 c 111 § 1; 1987 c 352 § 2; 1985 c 193 § 3; 1975 1st ex.s. c 129 § 3; 1965 c 74 § 3.]

Findings—Intent—Short title—2011 c 58: See notes following RCW 61.24.005.

Findings—2008 c 108: See RCW 19.144.005.

Additional notes found at www.leg.wa.gov

61.24.031 Notice of default under RCW 61.24.030(8)—Beneficiary's duties—Borrower's options.

(1)(a) A trustee, beneficiary, or authorized agent may not issue a notice of default under RCW 61.24.030(8) until: (i) Thirty days after initial contact with the borrower was initiated as required under (b) of this subsection or thirty days after satisfying the due diligence requirements as described in subsection (5) of this section and the borrower has not responded; or (ii) if the borrower responds to the initial contact, ninety days after the initial contact with the borrower was initiated.

(b) A beneficiary or authorized agent shall make initial contact with the borrower by letter to provide the borrower with information required under (c) of this subsection and by telephone as required under subsection (5) of this section. The letter required under this subsection must be mailed in accordance with subsection (5)(a) of this section and must include the information described in (c) of this subsection and subsection (5)(e)(i) through (iv) of this section.

(c) The letter required under this subsection, developed by the department pursuant to RCW 61.24.033, at a minimum shall include:

(i) A paragraph printed in no less than twelve-point font and bolded that reads:

"You must respond within thirty days of the date of this letter. IF YOU DO NOT RESPOND within thirty days, a notice of default may be issued and you may lose your home in foreclosure.

IF YOU DO RESPOND within thirty days of the date of this letter, you will have an additional sixty days to meet with your lender before a notice of default may be issued.

You should contact a housing counselor or attorney as soon as possible. Failure to contact a housing counselor or attorney may result in your losing certain opportunities, such as meeting with your lender or participating in mediation in front of a neutral third party. A housing counselor or attorney can help you work with your lender to avoid foreclosure.";

(ii) The toll-free telephone number from the United States department of housing and urban development to find a department-approved housing counseling agency, the toll-free numbers for the statewide foreclosure hotline recommended by the housing finance commission, and the statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys;

(iii) A paragraph stating that a housing counselor may be available at little or no cost to the borrower and that whether or not the borrower contacts a housing counselor or attorney, the borrower has the right to request a meeting with the beneficiary; and

(iv) A paragraph explaining how the borrower may respond to the letter and stating that after responding the borrower will have an opportunity to meet with his or her beneficiary in an attempt to resolve and try to work out an alternative to the foreclosure and that, after ninety days from the date of the letter, a notice of default may be issued, which starts the foreclosure process.

(d) If the beneficiary has exercised due diligence as required under subsection (5) of this section and the borrower does not respond by contacting the beneficiary within thirty days of the initial contact, the notice of default may be issued. "Initial contact" with the borrower is considered made three days after the date the letter required in (b) of this subsection is sent.

(e) If a meeting is requested by the borrower or the borrower's housing counselor or attorney, the beneficiary or authorized agent shall schedule the meeting to occur before the notice of default is issued. An assessment of the borrower's financial ability to modify or restructure the loan obligation and a discussion of options must occur during the meeting scheduled for that purpose.

(f) The meeting scheduled to assess the borrower's financial ability to modify or restructure the loan obligation and discuss options to avoid foreclosure must be in person, unless the requirement to meet in person is waived in writing by the borrower or the borrower's representative. A person who is authorized to modify the loan obligation or reach an alternative resolution to foreclosure on behalf of the beneficiary may participate by telephone or video conference, so long as a representative of the beneficiary is at the meeting in person.

(2) A notice of default issued under RCW 61.24.030(8) must include a declaration, as provided in subsection (9) of this section, from the beneficiary or authorized agent that it has contacted the borrower as provided in subsection (1) of this section, it has tried with due diligence to contact the borrower under subsection (5) of this section, or the borrower has surrendered the property to the trustee, beneficiary, or authorized agent. Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely

on the declaration as evidence that the requirements of this section have been satisfied, and the trustee is not liable for the beneficiary's or its authorized agent's failure to comply with the requirements of this section.

(3) If, after the initial contact under subsection (1) of this section, a borrower has designated a housing counseling agency, housing counselor, or attorney to discuss with the beneficiary or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure, the borrower shall inform the beneficiary or authorized agent and provide the contact information to the beneficiary or authorized agent. The beneficiary or authorized agent shall contact the designated representative for the borrower to meet.

(4) The beneficiary or authorized agent and the borrower or the borrower's representative shall attempt to reach a resolution for the borrower within the ninety days from the time the initial contact is sent and the notice of default is issued. A resolution may include, but is not limited to, a loan modification, an agreement to conduct a short sale, or a deed in lieu of foreclosure transaction, or some other workout plan. Any modification or workout plan offered at the meeting with the borrower's designated representative by the beneficiary or authorized agent is subject to approval by the borrower.

(5) A notice of default may be issued under RCW 61.24.030(8) if a beneficiary or authorized agent has initiated contact with the borrower as required under subsection (1)(b) of this section and the failure to meet with the borrower occurred despite the due diligence of the beneficiary or authorized agent. Due diligence requires the following:

(a) A beneficiary or authorized agent shall first attempt to contact a borrower by sending a first-class letter to the address in the beneficiary's records for sending account statements to the borrower and to the address of the property encumbered by the deed of trust. The letter must be the letter described in subsection (1)(c) of this section.

(b)(i) After the letter has been sent, the beneficiary or authorized agent shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls must be made to the primary and secondary telephone numbers on file with the beneficiary or authorized agent.

(ii) A beneficiary or authorized agent may attempt to contact a borrower using an automated system to dial borrowers if the telephone call, when answered, is connected to a live representative of the beneficiary or authorized agent.

(iii) A beneficiary or authorized agent satisfies the telephone contact requirements of this subsection (5)(b) if the beneficiary or authorized agent determines, after attempting contact under this subsection (5)(b), that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected or are not good contact numbers for the borrower.

(c) If the borrower does not respond within fourteen days after the telephone call requirements of (b) of this subsection have been satisfied, the beneficiary or authorized agent shall send a certified letter, with return receipt requested, to the borrower at the address in the beneficiary's records for sending account statements to the borrower and to the address of the property encumbered by the deed of trust. The letter must include the information described in (e)(i) through (iv) of this subsection. The letter must also include a paragraph stating:

"Your failure to contact a housing counselor or attorney may result in your losing certain opportunities, such as meeting with your lender or participating in mediation in front of a neutral third party."

(d) The beneficiary or authorized agent shall provide a means for the borrower to contact the beneficiary or authorized agent in a timely manner, including a toll-free telephone number or charge-free equivalent that will provide access to a live representative during business hours.

(e) The beneficiary or authorized agent shall post a link on the home page of the beneficiary's or authorized agent's internet web site, if any, to the following information:

(i) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options;

(ii) A list of financial documents borrowers should collect and be prepared to present to the beneficiary or authorized agent when discussing options for avoiding foreclosure;

(iii) A toll-free telephone number or charge-free equivalent for borrowers who wish to discuss options for avoiding foreclosure with their beneficiary or authorized agent; and

(iv) The toll-free telephone number or charge-free equivalent made available by the department to find a department-approved housing counseling agency.

(6) Subsections (1) and (5) of this section do not apply if any of the following occurs:

(a) The borrower has surrendered the property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the trustee, beneficiary, or authorized agent; or

(b) The borrower has filed for bankruptcy, and the bankruptcy stay remains in place, or the borrower has filed for bankruptcy and the bankruptcy court has granted relief from the bankruptcy stay allowing enforcement of the deed of trust.

(7)(a) This section applies only to deeds of trust that are recorded against owner-occupied residential real property. This section does not apply to deeds of trust: (i) Securing a commercial loan; (ii) securing obligations of a grantor who is not the borrower or a guarantor; or (iii) securing a purchaser's obligations under a seller-financed sale.

(b) This section does not apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

(8) As used in this section:

(a) "Department" means the United States department of housing and urban development.

(b) "Seller-financed sale" means a residential real property transaction where the seller finances all or part of the purchase price, and that financed amount is secured by a deed of trust against the subject residential real property.

(9) The form of declaration to be provided by the beneficiary or authorized agent as required under subsection (2) of this section must be in substantially the following form:

"FORECLOSURE LOSS MITIGATION FORM

Please select applicable option(s) below.

The undersigned beneficiary or authorized agent for the beneficiary hereby represents and declares under the penalty of perjury that [check the applicable box and fill in any

blanks so that the trustee can insert, on the beneficiary's behalf, the applicable declaration in the notice of default required under chapter 61.24 RCW]:

(1) [] The beneficiary or beneficiary's authorized agent has contacted the borrower under, and has complied with, RCW 61.24.031 (contact provision to "assess the borrower's financial ability to pay the debt secured by the deed of trust and explore options for the borrower to avoid foreclosure") and the borrower did not request a meeting.

(2) [] The beneficiary or beneficiary's authorized agent has contacted the borrower as required under RCW 61.24.031 and the borrower or the borrower's designated representative requested a meeting. A meeting was held in compliance with RCW 61.24.031.

(3) [] The beneficiary or beneficiary's authorized agent has exercised due diligence to contact the borrower as required in RCW 61.24.031(5).

(4) [] The borrower has surrendered the secured property as evidenced by either a letter confirming the surrender or by delivery of the keys to the secured property to the beneficiary, the beneficiary's authorized agent or to the trustee.

(5) [] Under RCW 61.24.031, the beneficiary or the beneficiary's authorized agent has verified information that, on or before the date of this declaration, the borrower(s) has filed for bankruptcy, and the bankruptcy stay remains in place, or the borrower has filed for bankruptcy and the bankruptcy court has granted relief from the bankruptcy stay allowing the enforcement of the deed of trust." [2011 c 58 § 5; 2009 c 292 § 2.]

Findings—Intent—Short title—2011 c 58: See notes following RCW 61.24.005.

61.24.033 Model language for initial contact letter used by beneficiaries—Rules. (1)(a) The department must develop model language for the initial contact letter to be used by beneficiaries as required under RCW 61.24.031. The model language must explain how the borrower may respond to the letter. The department must develop the model language in both English and Spanish and both versions must be contained in the same letter.

(b) No later than thirty days after April 14, 2011, the department must create the following forms:

(i) The notice form to be used by housing counselors and attorneys to refer borrowers to mediation under RCW 61.24.163;

(ii) The notice form stating that the parties have been referred to mediation along with the required information under RCW 61.24.163(3)(a);

(iii) The waiver form as required in RCW 61.24.163(4)(b);

(iv) The scheduling form notice in RCW 61.24.163(5)(b); and

(v) The form for the mediator's written certification of mediation.

(2) The department may create rules to implement the mediation program under RCW 61.24.163 and to administer the funds as required under RCW 61.24.172. [2011 c 58 § 16.]

Findings—Intent—Short title—2011 c 58: See notes following RCW 61.24.005.

Effective date—2011 c 58 §§ 11, 12, and 16: See note following RCW 61.24.172.

61.24.127 Failure to bring civil action to enjoin foreclosure—Not a waiver of claims. (1) The failure of the borrower or grantor to bring a civil action to enjoin a foreclosure sale under this chapter may not be deemed a waiver of a claim for damages asserting:

(a) Common law fraud or misrepresentation;

(b) A violation of Title 19 RCW;

(c) Failure of the trustee to materially comply with the provisions of this chapter; or

(d) A violation of RCW 61.24.026.

(2) The nonwaived claims listed under subsection (1) of this section are subject to the following limitations:

(a) The claim must be asserted or brought within two years from the date of the foreclosure sale or within the applicable statute of limitations for such claim, whichever expires earlier;

(b) The claim may not seek any remedy at law or in equity other than monetary damages;

(c) The claim may not affect in any way the validity or finality of the foreclosure sale or a subsequent transfer of the property;

(d) A borrower or grantor who files such a claim is prohibited from recording a lis pendens or any other document purporting to create a similar effect, related to the real property foreclosed upon;

(e) The claim may not operate in any way to encumber or cloud the title to the property that was subject to the foreclosure sale, except to the extent that a judgment on the claim in favor of the borrower or grantor may, consistent with RCW 4.56.190, become a judgment lien on real property then owned by the judgment debtor; and

(f) The relief that may be granted for judgment upon the claim is limited to actual damages. However, if the borrower or grantor brings in the same civil action a claim for violation of chapter 19.86 RCW, arising out of the same alleged facts, relief under chapter 19.86 RCW is limited to actual damages, treble damages as provided for in RCW 19.86.090, and the costs of suit, including a reasonable attorney's fee.

(3) This section applies only to foreclosures of owner-occupied residential real property.

(4) This section does not apply to the foreclosure of a deed of trust used to secure a commercial loan. [2011 c 364 § 2; 2009 c 292 § 6.]

61.24.135 Consumer protection act—Unfair or deceptive acts or practices. (1) It is an unfair or deceptive act or practice under the consumer protection act, chapter 19.86 RCW, for any person, acting alone or in concert with others, to offer, or offer to accept or accept from another, any consideration of any type not to bid, or to reduce a bid, at a sale of property conducted pursuant to a power of sale in a deed of trust. The trustee may decline to complete a sale or deliver the trustee's deed and refund the purchase price, if it appears that the bidding has been collusive or defective, or that the sale might have been void. However, it is not an unfair or deceptive act or practice for any person, including a trustee, to state that a property subject to a recorded notice of trustee's sale or subject to a sale conducted pursuant to this

chapter is being sold in an "as-is" condition, or for the beneficiary to arrange to provide financing for a particular bidder or to reach any good faith agreement with the borrower, grantor, any guarantor, or any junior lienholder.

(2) It is an unfair or deceptive act in trade or commerce and an unfair method of competition in violation of the consumer protection act, chapter 19.86 RCW, for any person or entity to: (a) Violate the duty of good faith under RCW 61.24.163; (b) fail to comply with the requirements of RCW 61.24.174; or (c) fail to initiate contact with a borrower and exercise due diligence as required under RCW 61.24.031. [2011 c 58 § 14; 2008 c 153 § 6; 1998 c 295 § 15.]

Findings—Intent—Short title—2011 c 58: See notes following RCW 61.24.005.

61.24.160 Housing counselors—Good faith duty to attempt resolution—Resolution described—Mediation—Liability for civil damages—Annual report. (1)(a) A housing counselor who is contacted by a borrower under RCW 61.24.031 has a duty to act in good faith to attempt to reach a resolution with the beneficiary on behalf of the borrower within the ninety days provided from the date the beneficiary initiates contact with the borrower and the date the notice of default is issued. A resolution may include, but is not limited to, modification of the loan, an agreement to conduct a short sale, a deed in lieu of foreclosure transaction, or some other workout plan.

(b) Nothing in RCW 61.24.031 or this section precludes a meeting or negotiations between the housing counselor, borrower, and beneficiary at any time, including after the issuance of the notice of default.

(c) A borrower who is contacted under RCW 61.24.031 may seek the assistance of a housing counselor or attorney at any time.

(2) Housing counselors have a duty to act in good faith to assist borrowers by:

(a) Preparing the borrower for meetings with the beneficiary;

(b) Advising the borrower about what documents the borrower must have to seek a loan modification or other resolution;

(c) Informing the borrower about the alternatives to foreclosure, including loan modifications or other possible resolutions; and

(d) Providing other guidance, advice, and education as the housing counselor considers necessary.

(3) A housing counselor or attorney assisting a borrower may refer the borrower to a mediation program, pursuant to RCW 61.24.163, if:

(a) The housing counselor or attorney determines that mediation is appropriate based on the individual circumstances; and

(b) A notice of sale on the deed of trust has not been recorded.

(4) A referral to mediation by a housing counselor or attorney does not preclude a trustee issuing a notice of default if the requirements of RCW 61.24.031 have been met.

(5) Housing counselors providing assistance to borrowers under RCW 61.24.031 are not liable for civil damages resulting from any acts or omissions in providing assistance,

unless the acts or omissions constitute gross negligence or willful or wanton misconduct.

(6) Housing counselors shall provide information to the department to assist the department in its annual report to the legislature as required under RCW 61.24.163(15). The information provided to the department by the housing counselors should include outcomes of foreclosures and be similar to the information requested in the national foreclosure mortgage counseling client level foreclosure outcomes report form. [2011 c 58 § 6.]

Findings—Intent—Short title—2011 c 58: See notes following RCW 61.24.005.

61.24.163 Foreclosure mediation program—Timelines—Procedures—Duties and responsibilities of mediator, borrower, and beneficiary—Fees—Annual report.

(1) The foreclosure mediation program established in this section applies only to borrowers who have been referred to mediation by a housing counselor or attorney. The mediation program under this section is not governed by chapter 7.07 RCW and does not preclude mediation required by a court or other provision of law.

(2) A housing counselor or attorney referring a borrower to mediation shall send a notice to the borrower and the department, stating that mediation is appropriate.

(3) Within ten days of receiving the notice, the department shall:

(a) Send a notice to the beneficiary, the borrower, the housing counselor or attorney who referred the borrower, and the trustee stating that the parties have been referred to mediation. The notice must include the statements and list of documents and information described in subsection (5)(b)(i) through (iv) of this section; and

(b) Select a mediator and notify the parties of the selection.

(4)(a) Within forty-five days of receiving the referral from the department, the mediator shall convene a mediation session in the county where the borrower resides, unless the parties agree on another location. The parties may agree in writing to extend the time in which to schedule the mediation session. If the parties agree to extend the time, the beneficiary shall notify the trustee of the extension and the date the mediator is expected to issue the mediator's certification.

(b) Prior to scheduling a mediation session, the mediator shall require that both parties sign a waiver stating that neither party may call the mediator as a live witness in any litigation pertaining to a foreclosure action between the parties. However, the mediator's certification may be deemed admissible evidence, subject to court rules, in any litigation pertaining to a foreclosure action between the parties.

(5)(a) The mediator may schedule phone conferences, consultations with the parties individually, and other communications to ensure that the parties have all the necessary information to engage in a productive mediation.

(b) The mediator must send written notice of the time, date, and location of the mediation session to the borrower, the beneficiary, and the department at least fifteen days prior to the mediation session. At a minimum, the notice must contain:

(i) A statement that the borrower may be represented in the mediation session by an attorney or other advocate;

(ii) A statement that a person with authority to agree to a resolution, including a proposed settlement, loan modification, or dismissal or continuation of the foreclosure proceeding, must be present either in person or on the telephone or video conference during the mediation session;

(iii) A complete list of documents and information required by this section that the parties must provide to the mediator and the deadlines for providing the documents and information; and

(iv) A statement that the parties have a duty to mediate in good faith and that failure to mediate in good faith may impair the beneficiary's ability to foreclose on the property or the borrower's ability to modify the loan or take advantage of other alternatives to foreclosure.

(6) The borrower, the beneficiary or authorized agent, and the mediator must meet in person for the mediation session. However, a person with authority to agree to a resolution on behalf of the beneficiary may be present over the telephone or video conference during the mediation session.

(7) The participants in mediation must address the issues of foreclosure that may enable the borrower and the beneficiary to reach a resolution, including but not limited to reinstatement, modification of the loan, restructuring of the debt, or some other workout plan. To assist the parties in addressing issues of foreclosure, the mediator must require the participants to consider the following:

(a) The borrower's current and future economic circumstances, including the borrower's current and future income, debts, and obligations for the previous sixty days or greater time period as determined by the mediator;

(b) The net present value of receiving payments pursuant to a modified mortgage loan as compared to the anticipated net recovery following foreclosure;

(c) Any affordable loan modification calculation and net present value calculation when required under any federal mortgage relief program, including the home affordable modification program (HAMP) as applicable to government-sponsored enterprise and nongovernment-sponsored enterprise loans and any HAMP-related modification program applicable to loans insured by the federal housing administration, the veterans administration, and the rural housing service. If such a calculation is not required, then the beneficiary must use the current calculations, assumptions, and forms that are established by the federal deposit insurance corporation and published in the federal deposit insurance corporation loan modification program guide; and

(d) Any other loss mitigation guidelines to loans insured by the federal housing administration, the veterans administration, and the rural housing service, if applicable.

(8) A violation of the duty to mediate in good faith as required under this section may include:

(a) Failure to timely participate in mediation without good cause;

(b) Failure of the beneficiary to provide the following documentation to the borrower and mediator at least ten days before the mediation or pursuant to the mediator's instructions:

(i) An accurate statement containing the balance of the loan as of the first day of the month in which the mediation occurs;

(ii) Copies of the note and deed of trust;

(ii) Proof that the entity claiming to be the beneficiary is the owner of any promissory note or obligation secured by the deed of trust. Sufficient proof may be a copy of the declaration described in RCW 61.24.030(7)(a);

(iv) The best estimate of any arrearage and an itemized statement of the arrearages;

(v) An itemized list of the best estimate of fees and charges outstanding;

(vi) The payment history and schedule for the preceding twelve months, or since default, whichever is longer, including a breakdown of all fees and charges claimed;

(vii) All borrower-related and mortgage-related input data used in any net present value analysis;

(viii) An explanation regarding any denial for a loan modification, forbearance, or other alternative to foreclosure in sufficient detail for a reasonable person to understand why the decision was made;

(ix) The most recently available appraisal or other broker price opinion most recently relied upon by the beneficiary; and

(x) The portion or excerpt of the pooling and servicing agreement that prohibits the beneficiary from implementing a modification, if the beneficiary claims it cannot implement a modification due solely to limitations in a pooling and servicing agreement, and documentation or a statement detailing the efforts of the beneficiary to obtain a waiver of the pooling and servicing agreement provisions;

(c) Failure of the borrower to provide documentation to the beneficiary and mediator, at least ten days before the mediation or pursuant to the mediator's instruction, showing the borrower's current and future income, debts and obligations, and tax returns for the past two years;

(d) Failure of either party to pay the respective portion of the mediation fee in advance of the mediation as required under this section;

(e) Failure of a party to designate representatives with adequate authority to fully settle, compromise, or otherwise reach resolution with the borrower in mediation; and

(f) A request by a beneficiary that the borrower waive future claims he or she may have in connection with the deed of trust, as a condition of agreeing to a modification, except for rescission claims under the federal truth in lending act. Nothing in this section precludes a beneficiary from requesting that a borrower dismiss with prejudice any pending claims against the beneficiary, its agents, loan servicer, or trustee, arising from the underlying deed of trust, as a condition of modification.

(9) Within seven business days after the conclusion of the mediation session, the mediator must send a written certification to the department and the trustee and send copies to the parties of:

(a) The date, time, and location of the mediation session;

(b) The names of all persons attending in person and by telephone or video conference, at the mediation session;

(c) Whether a resolution was reached by the parties, including whether the default was cured by reinstatement, modification, or restructuring of the debt, or some other alternative to foreclosure was agreed upon by the parties;

(d) Whether the parties participated in the mediation in good faith; and

(e) A description of the net present value test used, along with a copy of the inputs, including the result of the net present value test expressed in a dollar amount.

(10) If the parties are unable to reach any agreement and the mediator certifies that the parties acted in good faith, the beneficiary may proceed with the foreclosure.

(11)(a) The mediator's certification that the beneficiary failed to act in good faith in mediation constitutes a defense to the nonjudicial foreclosure action that was the basis for initiating the mediation. In any action to enjoin the foreclosure, the beneficiary shall be entitled to rebut the allegation that it failed to act in good faith.

(b) The mediator's certification that the beneficiary failed to act in good faith during mediation does not constitute a defense to a judicial foreclosure or a future nonjudicial foreclosure action if a modification of the loan is agreed upon and the borrower subsequently defaults.

(c) If an agreement was not reached and the mediator's certification shows that the net present value of the modified loan exceeds the anticipated net recovery at foreclosure, that showing in the certification shall constitute a basis for the borrower to enjoin the foreclosure.

(12) The mediator's certification that the borrower failed to act in good faith in mediation authorizes the beneficiary to proceed with the foreclosure.

(13)(a) A trustee may not record the notice of sale until the trustee receives the mediator's certification stating that the mediation has been completed.

(b) If the trustee does not receive the mediator's certification, the trustee may record the notice of sale after ten days from the date the certification to the trustee was due. If the notice of sale is recorded under this subsection (13)(b) and the mediator subsequently issues a certification alleging the beneficiary violated the duty of good faith, the trustee may not proceed with the sale.

(14) A mediator may charge reasonable fees as authorized by this subsection and by the department. Unless the fee is waived or the parties agree otherwise, a foreclosure mediator's fee may not exceed four hundred dollars for a mediation session lasting between one hour and three hours. For a mediation session exceeding three hours, the foreclosure mediator may charge a reasonable fee, as authorized by the department. The mediator must provide an estimated fee before the mediation, and payment of the mediator's fee must be divided equally between the beneficiary and the borrower. The beneficiary and the borrower must tender the loan mediator's fee seven calendar days before the commencement of the mediation or pursuant to the mediator's instructions.

(15) Beginning December 1, 2012, and every year thereafter, the department shall report annually to the legislature on:

(a) The performance of the program, including the numbers of borrowers who are referred to mediation by a housing counselor or attorney;

(b) The results of the mediation program, including the number of mediations requested by housing counselors and attorneys, the number of certifications of good faith issued, the number of borrowers and beneficiaries who failed to mediate in good faith, and the reasons for the failure to mediate in good faith, if known, the numbers of loans restructured or modified, the change in the borrower's monthly payment

for principal and interest and the number of principal write-downs and interest rate reductions, and, to the extent practical, the number of borrowers who report a default within a year of restructuring or modification;

(c) The information received by housing counselors regarding outcomes of foreclosures; and

(d) Any recommendations for changes to the statutes regarding the mediation program. [2011 c 58 § 7.]

Findings—Intent—Short title—2011 c 58: See notes following RCW 61.24.005.

61.24.165 Application of RCW 61.24.163. (1) RCW 61.24.163 applies only to deeds of trust that are recorded against owner-occupied residential real property. The property must have been owner-occupied as of the date of the initial contact under RCW 61.24.031 was made.

(2) A borrower under a deed of trust on owner-occupied residential real property who has received a notice of default on or before July 22, 2011, may be referred to mediation under RCW 61.24.163 by a housing counselor or attorney.

(3) RCW 61.24.163 does not apply to deeds of trust:

(a) Securing a commercial loan;

(b) Securing obligations of a grantor who is not the borrower or a guarantor; or

(c) Securing a purchaser's obligations under a seller-financed sale.

(4) RCW 61.24.163 does not apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW. [2011 c 58 § 8.]

Findings—Intent—Short title—2011 c 58: See notes following RCW 61.24.005.

61.24.166 Application of RCW 61.24.163 to federally insured depository institutions—Annual application for exemption. The provisions of RCW 61.24.163 do not apply to any federally insured depository institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), that certifies to the department under penalty of perjury that it was not a beneficiary of deeds of trust in more than two hundred fifty trustee sales of owner-occupied residential real property that occurred in this state during the preceding calendar year. A federally insured depository institution certifying that RCW 61.24.163 does not apply must do so annually, beginning no later than thirty days after July 22, 2011, and no later than January 31st of each year thereafter. [2011 c 58 § 9.]

Findings—Intent—Short title—2011 c 58: See notes following RCW 61.24.005.

61.24.169 Department maintains list of approved foreclosure mediators—Training program. (1) For the purposes of RCW 61.24.163, the department must maintain a list of approved foreclosure mediators. The department may approve the following persons to serve as foreclosure mediators under this section:

(a) Attorneys who are active members of the Washington state bar association;

(b) Employees of United States department of housing and urban development-approved housing counseling agencies or approved by the Washington state housing finance commission;

(c) Employees or volunteers of dispute resolution centers under chapter 7.75 RCW; and

(d) Retired judges of Washington courts.

(2) The department may establish a required training program for foreclosure mediators and may require mediators to acquire training before being approved. The mediators must be familiar with relevant aspects of the law, have knowledge of community-based resources and mortgage assistance programs, and refer borrowers to these programs where appropriate.

(3) The department may remove any mediator from the approved list of mediators. [2011 c 58 § 10.]

Findings—Intent—Short title—2011 c 58: See notes following RCW 61.24.005.

61.24.172 Foreclosure fairness account created—

Uses. The foreclosure fairness account is created in the custody of the state treasurer. All receipts received under RCW 61.24.174 must be deposited into the account. Only the director of the department of commerce or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account must be used as follows: (1) No less than eighty percent must be used for the purposes of providing housing counselors for borrowers, except that this amount may be less than eighty percent only if necessary to meet the funding level specified for the office of the attorney general under subsection (2) of this section and the department under subsection (4) of this section; (2) up to six percent, or six hundred fifty-five thousand dollars per biennium, whichever amount is greater, to the office of the attorney general to be used by the consumer protection division to enforce this chapter; (3) up to two percent to the office of civil legal aid to be used for the purpose of contracting with qualified legal aid programs for legal representation of homeowners in matters relating to foreclosure. Funds provided under this subsection (3) must be used to supplement, not supplant, other federal, state, and local funds; (4) up to nine percent, or four hundred fifty-one thousand dollars per biennium, whichever amount is greater, to the department to be used for implementation and operation of the foreclosure fairness act; and (5) up to three percent to the department of financial institutions to conduct homeowner prepurchase and postpurchase outreach and education programs as defined in RCW 43.320.150.

The department shall enter into interagency agreements to contract with the Washington state housing finance commission and other appropriate entities to implement the foreclosure fairness act. [2011 c 58 § 11.]

Effective date—2011 c 58 §§ 11, 12, and 16: "Sections 11, 12, and 16 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 14, 2011]." [2011 c 58 § 19.]

Findings—Intent—Short title—2011 c 58: See notes following RCW 61.24.005.

61.24.174 Required payment for each property subject to notice of default—Owner-occupied residential real property—Exception—Deposit into foreclosure fairness account. (1) Except as provided in subsection (4) of this sec-

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tion, beginning October 1, 2011, and every quarter thereafter, every beneficiary issuing notices of default, or directing that a trustee or authorized agent issue the notice of default, on owner-occupied residential real property under this chapter must:

(a) Report to the department the number of owner-occupied residential real properties for which the beneficiary has issued a notice of default during the previous quarter; and

(b) Remit the amount required under subsection (2) of this section.

(2) For each owner-occupied residential real property for which a notice of default has been issued, the beneficiary issuing the notice of default, or directing that a trustee or authorized agent issue the notice of default, shall remit two hundred fifty dollars to the department to be deposited, as provided under RCW 61.24.172, into the foreclosure fairness account. The two hundred fifty dollar payment is required per property and not per notice of default. The beneficiary shall remit the total amount required in a lump sum each quarter.

(3) No later than thirty days after April 14, 2011, the beneficiaries required to report and remit to the department under this section shall determine the number of owner-occupied residential real properties for which notices of default were issued during the three months prior to April 14, 2011. The beneficiary shall remit to the department a one-time sum of two hundred fifty dollars multiplied by the number of properties. In addition, by July 31, 2011, the beneficiaries required to report and remit to the department under this section shall remit to the department another one-time sum of two hundred fifty dollars multiplied by the number of owner-occupied residential real properties for which notices of default were issued from April 14, 2011, through June 30, 2011. The department shall deposit the funds into the foreclosure fairness account as provided under RCW 61.24.172.

(4) This section does not apply to any beneficiary or loan servicer that is a federally insured depository institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), and that certifies under penalty of perjury that it has issued, or has directed a trustee or authorized agent to issue, fewer than two hundred fifty notices of default in the preceding year.

(5) This section does not apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW. [2011 1st sp.s. c 24 § 1; 2011 c 58 § 12.]

Effective date—2011 1st sp.s. c 24: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 7, 2011]." [2011 1st sp.s. c 24 § 2.]

Findings—Intent—Short title—2011 c 58: See notes following RCW 61.24.005.

Effective date—2011 c 58 §§ 11, 12, and 16: See note following RCW 61.24.172.

61.24.177 Deed of trust pool—Duty of servicer to maximize net present value. Any duty that servicers may have to maximize net present value under their pooling and servicing agreements is owed to all parties in a deed of trust pool, not to any particular parties, and a servicer acts in the best interests of all parties if it agrees to or implements a modification or workout plan when both of the following apply:

(1) The deed of trust is in payment default, or payment default is reasonably imminent; and

(2) Anticipated recovery under a modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis. [2011 c 58 § 13.]

Findings—Intent—Short title—2011 c 58: See notes following RCW 61.24.005.

Title 62A

UNIFORM COMMERCIAL CODE

Articles

- 2 Sales.**
- 2A Leases.**
- 7 Warehouse receipts, bills of lading and other documents of title.**
- 8 Investment securities.**
- 9A Secured transactions; sales of accounts, contract rights and chattel paper.**

Article 2

SALES

Sections

62A.2-705 Seller's stoppage of delivery in transit or otherwise.

62A.2-705 Seller's stoppage of delivery in transit or otherwise. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he or she discovers the buyer to be insolvent (RCW 62A.2-702) and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

- (a) Receipt of the goods by the buyer; or
- (b) Acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
- (c) Such acknowledgment to the buyer by a carrier by reshipment or as warehouse operator; or
- (d) Negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. [2011 c 336 § 823; 1965 ex.s. c 157 § 2-705. Cf. former RCW sections: (i) RCW 22.04.100; 1913 c 99 § 9; RRS § 3595; prior: 1891 c 134 § 7. (ii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior:

1886 p 121 § 7. (iii) RCW 22.04.500; 1913 c 99 § 49; RRS § 3635. (iv) RCW 63.04.580 through 63.04.600; 1925 ex.s. c 142 §§ 57 through 59; RRS §§ 5836-57 through 5836-59. (v) RCW 81.32.121, 81.32.141, and 81.32.421; 1961 c 14 §§ 81.32.121, 81.32.141, and 81.32.421; prior: 1915 c 159 §§ 12, 14, and 42; RRS §§ 3658, 3660, and 3688; formerly RCW 81.32.130, 81.32.160 and 81.32.510.]

Article 2A

LEASES

Sections

62A.2A-103 Definitions and index of definitions. (*Effective July 1, 2013.*)

62A.2A-310 Lessor's and lessee's rights when goods become accessions. (*Effective July 1, 2013.*)

62A.2A-526 Lessor's stoppage of delivery in transit or otherwise.

62A.2A-103 Definitions and index of definitions. (*Effective July 1, 2013.*) (1) In this Article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash, or by exchange of other property, or on secured or unsecured credit, and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

- (i) The lessor does not select, manufacture, or supply the goods;

- (ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

- (iii) Only in the case of a consumer lease, either:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract; or

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (RCW 62A.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash, or by exchange of other property, or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Accessions."	RCW 62A.2A-310.
"Construction mortgage."	RCW 62A.2A-309.
"Encumbrance."	RCW 62A.2A-309.
"Fixtures."	RCW 62A.2A-309.
"Fixture filing."	RCW 62A.2A-309.
"Purchase money lease."	RCW 62A.2A-309.

(3) The following definitions in other Articles apply to this Article:

"Account."	RCW 62A.9A-102.
"Between merchants."	RCW 62A.2-104.
"Buyer."	RCW 62A.2-103.
"Chattel paper."	RCW 62A.9A-102.
"Consumer goods."	RCW 62A.9A-102.
"Document."	RCW 62A.9A-102.
"Entrusting."	RCW 62A.2-403.
"General intangible."	RCW 62A.9A-102.
"Good faith."	RCW 62A.2-103.
"Instrument."	RCW 62A.9A-102.
"Merchant."	RCW 62A.2-104(1).
"Mortgage."	RCW 62A.9A-102.

"Pursuant to commitment."	RCW 62A.9A-102.
"Receipt."	RCW 62A.2-103.
"Sale."	RCW 62A.2-106.
"Sale on approval."	RCW 62A.2-326.
"Sale or return."	RCW 62A.2-326.
"Seller."	RCW 62A.2-103.

(4) In addition, Article 62A.1 RCW contains general definitions and principles of construction and interpretation applicable throughout this Article. [2011 c 74 § 701; 2000 c 250 § 9A-808; 1993 c 230 § 2A-103.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Additional notes found at www.leg.wa.gov

62A.2A-310 Lessor's and lessee's rights when goods become accessions. (Effective July 1, 2013.) (1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4) of this section.

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) of this section but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease, or disclaimed an interest in the goods as part of the whole, or the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility.

(4) Unless the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility, the interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) of this section is subordinate to the interest of:

(a) A buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions;

(b) A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract; or

(c) A creditor with a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under *RCW 62A.9A-311(2).

(5) When under subsections (2) or (3) and (4) of this section a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this Article, or (b) if necessary to enforce his or her other rights and remedies under this Article, remove the goods from the whole, free and clear of all interests in the whole, but he or she must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the

whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation. [2011 c 74 § 705; 2000 c 250 § 9A-812; 1993 c 230 § 2A-310.]

***Reviser's note:** The sections in chapter 62A.9A RCW amended by 2011 c 74 were renumbered pursuant to the Statute Law Committee to conform with the Uniform Commercial Code numbering style. Subsection (2) was changed to subsection (b).

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Additional notes found at www.leg.wa.gov

62A.2A-526 Lessor's stoppage of delivery in transit or otherwise. (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1) of this section, the lessor may stop delivery until:

(a) Receipt of the goods by the lessee;

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) Such an acknowledgment to the lessee by a carrier via reshipment or as warehouse operator.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. [2011 c 336 § 824; 1993 c 230 § 2A-526.]

Additional notes found at www.leg.wa.gov

Article 7

WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

Sections

62A.7-102	Definitions and index of definitions.
62A.7-201	Who may issue a warehouse receipt; storage under government bond.
62A.7-202	Form of warehouse receipt; essential terms; optional terms.
62A.7-204	Duty of care; contractual limitation of warehouse operator's liability.
62A.7-205	Title under warehouse receipt defeated in certain cases.
62A.7-206	Termination of storage at warehouse operator's option.
62A.7-207	Goods must be kept separate; fungible goods.
62A.7-209	Lien of warehouse operator.
62A.7-210	Enforcement of warehouse operator's lien.
62A.7-401	Irregularities in issue of receipt or bill or conduct of issuer.
62A.7-403	Obligation of warehouse operator or carrier to deliver; excuse.

62A.7-102 Definitions and index of definitions. (1) In this Article, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouse operator, carrier, or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definitions in Article 1 (RCW 62A.1-201).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his or her instructions.

(h) "Warehouse operator" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are: "Duly negotiate." RCW 62A.7-501.

"Person entitled under the document." RCW 62A.7-403(4).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Contract for sale." RCW 62A.2-106.

"Overseas." RCW 62A.2-323.

"Receipt" of goods. RCW 62A.2-103.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [2011 c 336 § 825; 1965 ex.s. c 157 § 7-102. Cf. former RCW sections: (i) RCW 22.04.585(1); 1913 c 99 § 58; RRS § 3644; formerly RCW 22.04.010. (ii) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (iii) RCW 81.32.011; 1961 c 14 § 81.32.011; prior: 1915 c 159 § 1; RRS § 3647; formerly RCW 81.32.020. (iv) RCW 81.32.531(1); 1961 c 14 § 81.32.531; prior: 1915 c 159 § 53; RRS § 3699; formerly RCW 81.32.010, part.]

62A.7-201 Who may issue a warehouse receipt; storage under government bond. (1) A warehouse receipt may be issued by any warehouse operator.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouse operator. [2011 c 336 § 826; 1965 ex.s. c 157 § 7-

201. Cf. former RCW 22.04.020; 1913 c 99 § 1; RRS § 3587; prior: 1891 c 134 § 1.]

62A.7-202 Form of warehouse receipt; essential terms; optional terms. (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written, printed, or electronic terms each of the following, the warehouse operator is liable for damages caused by the omission to a person injured thereby:

(a) The location of the warehouse where the goods are stored;

(b) The date of issue of the receipt;

(c) The consecutive number of the receipt;

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his or her order;

(e) The rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt;

(f) A description of the goods or of the packages containing them;

(g) The signature of the warehouse operator, which may be made by his or her authorized agent;

(h) If the receipt is issued for goods of which the warehouse operator is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouse operator claims a lien or security interest (RCW 62A.7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouse operator or to his or her agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouse operator may insert in his or her receipt any other terms which are not contrary to the provisions of this Title and do not impair his or her obligation of delivery (RCW 62A.7-403) or his or her duty of care (RCW 62A.7-204). Any contrary provisions shall be ineffective. [2011 c 336 § 827; 2000 c 58 § 1; 1965 ex.s. c 157 § 7-202. Cf. former RCW sections: (i) RCW 22.04.030; 1913 c 99 § 2; RRS § 3588; prior: 1891 c 134 § 8. (ii) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589.]

62A.7-204 Duty of care; contractual limitation of warehouse operator's liability. (1) A warehouse operator is liable for damages for loss of or injury to the goods caused by his or her failure to exercise such care in regard to them as a reasonably careful person would exercise under like circumstances but unless otherwise agreed he or she is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouse operator shall not be liable; provided, however, that such liability may on written request of the bailor at

the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouse operator's tariff, if any. No such limitation is effective with respect to the warehouse operator's liability for conversion to his or her own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(4) This section does not impair or repeal the duties of care or liabilities or penalties for breach thereof as provided in chapters 22.09 and 22.32 RCW. [2011 c 336 § 828; 2009 c 549 § 1016; 1981 c 13 § 1; 1965 ex.s. c 157 § 7-204. Cf. former RCW sections: (i) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589. (ii) RCW 22.04.220; 1913 c 99 § 21; RRS § 3607.]

62A.7-205 Title under warehouse receipt defeated in certain cases. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouse operator who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated. [2011 c 336 § 829; 1965 ex.s. c 157 § 7-205.]

62A.7-206 Termination of storage at warehouse operator's option. (1) A warehouse operator may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouse operator may sell them in accordance with the provisions of the section on enforcement of a warehouse operator's lien (RCW 62A.7-210).

(2) If a warehouse operator in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his or her lien within the time prescribed in subsection (1) of this section for notification, advertisement, and sale, the warehouse operator may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouse operator had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouse operator may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouse operator after a reasonable effort is unable to sell the goods he or she may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouse operator must deliver the goods to any person entitled to them under this Article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouse operator may satisfy his or her lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he or she would have been bound to deliver the goods. [2011 c 336 § 830; 1965 ex.s. c 157 § 7-206. Cf. former RCW 22.04.350; 1913 c 99 § 34; RRS § 3620.]

62A.7-207 Goods must be kept separate; fungible goods. (1) Unless the warehouse receipt otherwise provides, a warehouse operator must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouse operator is severally liable to each owner for that owner's share. Where because of over-issue a mass of fungible goods is insufficient to meet all the receipts which the warehouse operator has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated. [2011 c 336 § 831; 1965 ex.s. c 157 § 7-207. Cf. former RCW sections: (i) RCW 22.04.230; 1913 c 99 § 22; RRS § 3608; prior: 1891 c 134 § 3. (ii) RCW 22.04.240; 1913 c 99 § 23; RRS § 3609.]

62A.7-209 Lien of warehouse operator. (1) A warehouse operator has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his or her possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouse operator also has a lien against him or her for such charges and expenses whether or not the other goods have been delivered by the warehouse operator. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouse operator's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt. A warehouse operator's lien as provided in this chapter takes priority over all other liens and perfected or unperfected security interests.

(2) The warehouse operator may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1) of this section, such as for money advanced and interest. Such a security interest is governed by the Article on Secured Transactions (*Article 9).

(3) A warehouse operator's lien for charges and expenses under subsection (1) of this section or a security

interest under subsection (2) of this section is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him or her to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under RCW 62A.7-503.

(4) A warehouse operator loses his or her lien on any goods which he or she voluntarily delivers or which he or she unjustifiably refuses to deliver. [2011 c 336 § 832; 1987 c 395 § 1; 1965 ex.s. c 157 § 7-209. Cf. former RCW sections: RCW 22.04.280 through 22.04.330; 1913 c 99 §§ 27 through 32; RRS §§ 3613 through 3618.]

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

62A.7-210 Enforcement of warehouse operator's lien. (1) Except as provided in subsection (2) of this section, a warehouse operator's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouse operator is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouse operator either sells the goods in the usual manner in any recognized market therefor, or if he or she sells at the price current in such market at the time of his or her sale, or if he or she has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he or she has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouse operator's lien on goods other than goods stored by a merchant in the course of his or her business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general

circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouse operator subject to the terms of the receipt and this Article.

(4) The warehouse operator may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouse operator's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouse operator with the requirements of this section.

(6) The warehouse operator may satisfy his or her lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he or she would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his or her debtor.

(8) Where a lien is on goods stored by a merchant in the course of his or her business the lien may be enforced in accordance with either subsection (1) or (2) of this section.

(9) The warehouse operator is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [2011 c 336 § 833; 1965 ex.s. c 157 § 7-210. Cf. former RCW sections: RCW 22.04.340, 22.04.360, and 22.04.370; 1913 c 99 §§ 33, 35, and 36; RRS §§ 3619, 3621, and 3622.]

62A.7-401 Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this Article on an issuer apply to a document of title regardless of the fact that:

(a) The document may not comply with the requirements of this Article or of any other law or regulation regarding its issue, form, or content; or

(b) The issuer may have violated laws regulating the conduct of his or her business; or

(c) The goods covered by the document were owned by the bailee at the time the document was issued; or

(d) The person issuing the document does not come within the definition of warehouse operator if it purports to be a warehouse receipt. [2011 c 336 § 834; 1965 ex.s. c 157 § 7-401. Cf. former RCW sections: (i) RCW 22.04.210; 1913 c 99 § 20; RRS § 3606. (ii) RCW 81.32.231; 1961 c 14 § 81.32.231; prior: 1915 c 159 § 23; RRS § 3669; formerly RCW 81.32.240.]

62A.7-403 Obligation of warehouse operator or carrier to deliver; excuse. (1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3) of this section, unless and to the extent that the bailee establishes any of the following:

(a) Delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(c) Previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouse operator's lawful termination of storage;

(d) The exercise by a seller of his or her right to stop delivery pursuant to the provisions of the Article on Sales (RCW 62A.2-705);

(e) A diversion, reconignment, or other disposition pursuant to the provisions of this Article (RCW 62A.7-303) or tariff regulating such right;

(f) Release, satisfaction, or any other fact affording a personal defense against the claimant;

(g) Any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under RCW 62A.7-503(1), he or she must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document. [2011 c 336 § 835; 1965 ex.s. c 157 § 7-403. Cf. former RCW sections: (i) RCW 22.04.090, and 22.04.100; 1913 c 99 §§ 8 and 9; RRS §§ 3594, and 3595; prior: 1891 c 134 §§ 6, and 7. (ii) RCW 22.04.110, 22.04.130, 22.04.170, and 22.04.200; 1913 c 99 §§ 10, 12, 16, and 19; RRS §§ 3596, 3598, 3602, and 3605. (iii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior: 1886 p 121 § 7. (iv) RCW 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1961 c 14 §§ 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1915 c 159 §§ 11 through 15, 19, and 22; RRS §§ 3657 through 3661, 3665, and 3668; formerly RCW 81.32.120 through 81.32.160, 81.32.200, and 81.32.230.]

Article 8

INVESTMENT SECURITIES

Sections

62A.8-103 Rules for determining whether certain obligations and interests are securities or financial assets. (*Effective July 1, 2013.*)

62A.8-103 Rules for determining whether certain obligations and interests are securities or financial assets. (*Effective July 1, 2013.*) (1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in RCW 62A.9A-102, is not a security or a financial asset. [2011 c 74 § 706; 2000 c 250 § 9A-815; 1995 c 48 § 3; 1986 c 35 § 2; 1965 ex.s. c 157 § 8-103. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.140.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Additional notes found at www.leg.wa.gov

Article 9A

SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

Sections

SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

62A.9A-102 Definitions and index of definitions. (*Effective July 1, 2013.*)
62A.9A-105 Control of electronic chattel paper. (*Effective July 1, 2013.*)

SUBPART 2. RIGHTS AND DUTIES

62A.9A-209 Duties of secured party if account debtor has been notified of assignment. (*Effective July 1, 2013.*)

SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY

62A.9A-307 Location of debtor. (*Effective July 1, 2013.*)

SUBPART 2. PERFECTION

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 62A.9A-808 Person entitled to file initial financing statement or continuation statement. *(Effective July 1, 2013.)*
 62A.9A-809 Priority. *(Effective July 1, 2013.)*

Reviser's note: The sections in this chapter that were amended by 2011 c 74 and internal references were renumbered in the style of the Uniform

Commercial Code pursuant to an order by the Statute Law Committee under the authority of RCW 1.08.015(2).

SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

62A.9A-102 Definitions and index of definitions. (Effective July 1, 2013.) (a) **Article 9A definitions.** In this Article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2)(A) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables.

(B) The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business, furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term "chattel paper" does not include (A) charters or other contracts involving the use or hire of a vessel or (B) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual, and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to, or the death of, an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business, provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs a consumer obligation; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligation" means an obligation which:

(A) Is incurred as part of a transaction entered into primarily for personal, family, or household purposes; and

(B) Arises from an extension of credit, or commitment to extend credit, in an aggregate amount not exceeding forty thousand dollars, or is secured by personal property used or expected to be used as a principal dwelling.

"Consumer obligor" means an obligor who is an individual and who incurred a consumer obligation.

(26) "Consumer transaction" means a transaction in which (A) an individual incurs a consumer obligation, (B) a security interest secures the obligation, and (C) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in RCW 62A.7-201(2).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to RCW 62A.9A-519(a).

(37) "Filing office" means an office designated in RCW 62A.9A-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to RCW 62A.9A-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying RCW 62A.9A-502 (a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (A) fixtures, (B) standing timber that is to be cut and removed under a conveyance or contract for sale, (C) the unborn young of animals, (D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (E) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction or a manufactured home converted to real property under chapter 65.20 RCW.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assign-

ment. The term does not include (A) investment property, (B) letters of credit, (C) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, (D) writings that do not contain a promise or order to pay, or (E) writings that are expressly nontransferable or nonassignable.

(48) "Inventory" means goods, other than farm products, which:

- (A) Are leased by a person as lessor;
- (B) Are held by a person for sale or lease or to be furnished under a contract of service;
- (C) Are furnished by a person under a contract of service; or
- (D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

- (A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;
- (B) An assignee for benefit of creditors from the time of assignment;
- (C) A trustee in bankruptcy from the date of the filing of the petition; or
- (D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a manufactured home or mobile home as defined in RCW 46.04.302.

(54) [Reserved]

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under RCW 62A.9A-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (A) money, (B) money's worth in property, services, or new credit, or (C) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (A) owes payment or other performance of the obligation, (B) has provided property other than the collateral to secure payment or other performance of the obligation, or (C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in RCW 62A.9A-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under RCW 62A.9A-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

- (A) The spouse or state registered domestic partner of the individual;
- (B) A brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) An ancestor or lineal descendant of the individual or the individual's spouse or state registered domestic partner; or

(D) Any other relative, by blood or by marriage or other law, of the individual or the individual's spouse or state registered domestic partner who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

- (A) A person directly or indirectly controlling, controlled by, or under common control with the organization;
- (B) An officer or director of, or a person performing similar functions with respect to, the organization;
- (C) An officer or director of, or a person performing similar functions with respect to, a person described in (63)(A) of this subsection;

(D) The spouse or state registered domestic partner of an individual described in (63)(A), (B), or (C) of this subsection; or

(E) An individual who is related by blood or by marriage or other law to an individual described in (63)(A), (B), (C), or (D) of this subsection and shares the same home with the individual.

(64) "Proceeds", except as used in RCW 62A.9A-609(b), means the following property:

- (A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (B) Whatever is collected on, or distributed on account of, collateral;
- (C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party, which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Public organic record" means a record that is available to the public for inspection and is:

(A) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(B) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) A record consisting of legislation enacted by the legislature of a state or the congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

(69) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(70) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(71) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

(72) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), 62A.2A-508(5), 62A.4-210, or 62A.5-118.

(74) "Security agreement" means an agreement that creates or provides for a security interest.

(75) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under (75)(A) of this subsection.

(76) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(78) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **Definitions in other Articles.** The following definitions in other Articles apply to this Article:

"Applicant."	RCW 62A.5-102.
"Beneficiary."	RCW 62A.5-102.
"Broker."	RCW 62A.8-102.
"Certificated security."	RCW 62A.8-102.
"Check."	RCW 62A.3-104.
"Clearing corporation."	RCW 62A.8-102.
"Contract for sale."	RCW 62A.2-106.
"Customer."	RCW 62A.4-104.
"Entitlement holder."	RCW 62A.8-102.
"Financial asset."	RCW 62A.8-102.
"Holder in due course."	RCW 62A.3-302.

"Issuer" with respect to a letter of credit or letter-of-credit right.	RCW 62A.5-102.
"Issuer" with respect to a security.	RCW 62A.8-201.
"Lease."	RCW 62A.2A-103.
"Lease agreement."	RCW 62A.2A-103.
"Lease contract."	RCW 62A.2A-103.
"Leasehold interest."	RCW 62A.2A-103.
"Lessee."	RCW 62A.2A-103.
"Lessee in ordinary course of business."	RCW 62A.2A-103.
"Lessor."	RCW 62A.2A-103.
"Lessor's residual interest."	RCW 62A.2A-103.
"Letter of credit."	RCW 62A.5-102.
"Merchant."	RCW 62A.2-104.
"Negotiable instrument."	RCW 62A.3-104.
"Nominated person."	RCW 62A.5-102.
"Note."	RCW 62A.3-104.
"Proceeds of a letter of credit."	RCW 62A.5-114.
"Prove."	RCW 62A.3-103.
"Sale."	RCW 62A.2-106.
"Securities account."	RCW 62A.8-501.
"Securities intermediary."	RCW 62A.8-102.
"Security."	RCW 62A.8-102.
"Security certificate."	RCW 62A.8-102.
"Security entitlement."	RCW 62A.8-102.
"Uncertificated security."	RCW 62A.8-102.

(c) **Article 1 definitions and principles.** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [2011 c 74 § 101; 2001 c 32 § 16; 2000 c 250 § 9A-102.]

Application—2011 c 74: "(1) **Preeffective date transactions or liens.** Except as otherwise provided in this section or sections 602 through 608 of this act, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2013.

(2) **Preeffective date proceedings.** This act does not affect an action, case, or proceeding commenced before July 1, 2013." [2011 c 74 § 601.]

Correction of references—2011 c 74: "The office of the code reviser must develop legislation for the 2012 legislative session to correct any internal references required to be updated as a result of amendments in this act." [2011 c 74 § 802.]

Effective date—2011 c 74: "This act takes effect July 1, 2013." [2011 c 74 § 803.]

Effective date—2001 c 32: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 32 § 55.]

62A.9A-105 Control of electronic chattel paper. (Effective July 1, 2013.) (a) **General rule: Control of electronic chattel paper.** A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) **Specific facts giving control.** A system satisfies subsection (a) of this section if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in (4), (5), and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized. [2011 c 74 § 102; 2001 c 32 § 18; 2000 c 250 § 9A-105.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

SUBPART 2. RIGHTS AND DUTIES

62A.9A-209 Duties of secured party if account debtor has been notified of assignment. (Effective July 1, 2013.) (a) **Applicability of section.** Except as otherwise provided in subsection (c) of this section, this section applies if:

(1) There is no outstanding secured obligation; and

(2) The secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) **Duties of secured party after receiving demand from debtor.** Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under RCW 62A.9A-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) **Inapplicability to sales.** This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible. [2011 c 74 § 707; 2000 c 250 § 9A-209.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY

62A.9A-307 Location of debtor. (Effective July 1, 2013.) (a) **"Place of business."** In this section, "place of business" means a place where a debtor conducts its affairs.

(b) **Debtor's location: General rules.** Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) **Limitation of applicability of subsection (b) of this section.** Subsection (b) of this section applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) of this section does not apply, the debtor is located in the District of Columbia.

(d) **Continuation of location: Cessation of existence, etc.** A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c) of this section.

(e) **Location of registered organization organized under state law.** A registered organization that is organized under the law of a state is located in that state.

(f) **Location of registered organization organized under federal law; bank branches and agencies.** Except as otherwise provided in subsection (i) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or

(3) In the District of Columbia, if neither (1) or (2) of this subsection applies.

(g) **Continuation of location: Change in status of registered organization.** A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) of this section notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) **Location of United States.** The United States is located in the District of Columbia.

(i) **Location of foreign bank branch or agency if licensed in only one state.** A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) **Location of foreign air carrier.** A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) **Section applies only to this part.** This section applies only for purposes of this part. [2011 c 74 § 201; 2000 c 250 § 9A-307.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

[2011 RCW Supp—page 1258]

SUBPART 2. PERFECTION

62A.9A-309 Security interest perfected upon attachment. (Effective July 1, 2013.) The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in RCW 62A.9A-311(b) with respect to consumer goods that are subject to a statute or treaty described in RCW 62A.9A-311(a);

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer more than fifty thousand dollars, or ten percent of the total amount of the assignor's outstanding accounts and payment intangibles;

(3) A sale of a payment intangible;

(4) A sale of a promissory note;

(5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) A security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), or 62A.2A-508(5), until the debtor obtains possession of the collateral;

(7) A security interest of a collecting bank arising under RCW 62A.4-210;

(8) A security interest of an issuer or nominated person arising under RCW 62A.5-118;

(9) A security interest arising in the delivery of a financial asset under RCW 62A.9A-206(c);

(10) A security interest in investment property created by a broker or securities intermediary;

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate. [2011 c 74 § 708; 2000 c 250 § 9A-309.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-310 When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply. (Effective July 1, 2013.) (a) **General rule: Perfection by filing.** Except as otherwise provided in subsections (b) and (d) of this section and RCW 62A.9A-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) **Exceptions: Filing not necessary.** The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under RCW 62A.9A-308 (d), (e), (f), or (g);

(2) That is perfected under RCW 62A.9A-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in RCW 62A.9A-311(a);

(4) In goods in possession of a bailee which is perfected under RCW 62A.9A-312(d) (1) or (2);

(5) In certificated securities, documents, goods, or instruments which is perfected without filing or possession under RCW 62A.9A-312 (e), (f), or (g);

(6) In collateral in the secured party's possession under RCW 62A.9A-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under RCW 62A.9A-313;

(8) In deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under RCW 62A.9A-314;

(9) In proceeds which is perfected under RCW 62A.9A-315; or

(10) That is perfected under RCW 62A.9A-316.

(c) **Assignment of perfected security interest.** If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(d) **Further exception: Filing not necessary for handler's lien.** The filing of a financing statement is not necessary to perfect the agricultural lien of a handler on orchard crops as provided in RCW 60.11.020(3). [2011 c 74 § 709; 2000 c 250 § 9A-310.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-311 Perfection of security interests in property subject to certain statutes, regulations, and treaties. (Effective July 1, 2013.) (a) **Security interest subject to other law.** Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt RCW 62A.9A-310(a);

(2) RCW 46.12.675 or 88.02.520, or chapter 65.12 RCW; or

(3) A statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) **Compliance with other law.** Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Article. Except as otherwise provided in subsection (d) of this section, RCW 62A.9A-313, and 62A.9A-316 (d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) of this section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) **Duration and renewal of perfection.** Except as otherwise provided in subsection (d) of this section and RCW 62A.9A-316 (d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the

requirements prescribed by a statute, regulation, or treaty described in subsection (a) of this section are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Article.

(d) **Inapplicability to certain inventory.** During any period in which collateral subject to RCW 46.12.675 or 88.02.520, or chapter 65.12 RCW is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person. [2011 c 74 § 202; 2010 c 161 § 1151; 2001 c 32 § 25; 2000 c 250 § 9A-311.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-313 When possession by or delivery to secured party perfects security interest without filing. (Effective July 1, 2013.) (a) **Perfection by possession or delivery.** Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under RCW 62A.8-301.

(b) **Goods covered by certificate of title.** With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in RCW 62A.9A-316(d).

(c) **Collateral in possession of person other than debtor.** With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) **Time of perfection by possession; continuation of perfection.** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) **Time of perfection by delivery; continuation of perfection.** A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under RCW 62A.8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) **Acknowledgment not required.** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) **Effectiveness of acknowledgment; no duties or confirmation.** If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or RCW 62A.8-301(1), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) **Secured party's delivery to person other than debtor.** A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) **Effect of delivery under subsection (h) of this section; no duties or confirmation.** A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides. [2011 c 74 § 710; 2001 c 32 § 26; 2000 c 250 § 9A-313.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-316 Effect of change in governing law. (Effective July 1, 2013.) (a) **General rule: Effect on perfection of change in governing law.** A security interest perfected pursuant to the law of the jurisdiction designated in RCW 62A.9A-301(1) or 62A.9A-305(c) remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) **Security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (a) of this section becomes perfected under the law of the other jurisdiction before the earliest time or event described in subsection (a) of this section, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) **Possessory security interest in collateral moved to new jurisdiction.** A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) **Goods covered by certificate of title from this state.** Except as otherwise provided in subsection (e) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) **When subsection (d) security interest becomes unperfected against purchasers.** A security interest described in subsection (d) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under RCW 62A.9A-311(b) or 62A.9A-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) The expiration of four months after the goods had become so covered.

(f) **Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.** A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) **Subsection (f) of this section security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (f) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in subsection (f) of this section, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) **Effect on filed financing statement of change in governing law.** The following rules apply to collateral to

which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in RCW 62A.9A-301(1) or 62A.9A-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) If a security interest perfected by a financing statement that is effective under (1) of this subsection (h) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in RCW 62A.9A-301(1) or 62A.9A-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) **Effect of change in governing law on financing statement filed against original debtor.** If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in RCW 62A.9A-301(1) or 62A.9A-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under RCW 62A.9A-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in RCW 62A.9A-301(1) or 62A.9A-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value. [2011 c 74 § 203; 2000 c 250 § 9A-316.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

SUBPART 3. PRIORITY

62A.9A-317 Interests that take priority over or take free of security interest or agricultural lien. (*Effective July 1, 2013.*) (a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under RCW 62A.9A-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier time:

(A) The security interest or agricultural lien is perfected; or

(B) One of the conditions specified in RCW 62A.9A-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in RCW 62A.9A-320 and 62A.9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing. [2011 c 74 § 204; 2001 c 32 § 27; 2000 c 250 § 9A-317.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-320 Buyer of goods. (*Effective July 1, 2013.*)

(a) **Buyer in ordinary course of business.** Except as otherwise provided in subsection (e) of this section, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) **Buyer of consumer goods.** Except as otherwise provided in subsection (e) of this section, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) Without knowledge of the security interest;
- (2) For value;
- (3) Primarily for the buyer's personal, family, or household purposes; and
- (4) Before the filing of a financing statement covering the goods.

(c) **Effectiveness of filing for subsection (b) of this section.** To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b) of this section, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by RCW 62A.9A-316 (a) and (b).

(d) **Buyer in ordinary course of business at wellhead or minehead.** A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) **Possessory security interest not affected.** Subsections (a) and (b) of this section do not affect a security interest in goods in the possession of the secured party under RCW 62A.9A-313. [2011 c 74 § 711; 2000 c 250 § 9A-320.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-326 Priority of security interests created by new debtor. (Effective July 1, 2013.) (a) **Subordination of security interest created by new debtor.** Subject to subsection (b) of this section, a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of RCW 62A.9A-316(i)(1) or 62A.9A-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.

(b) **Priority under other provisions; multiple original debtors.** The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (a) of this section. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound. [2011 c 74 § 205; 2000 c 250 § 9A-326.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-328 Priority of security interests in investment property. (Effective July 1, 2013.) The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under RCW 62A.9A-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in subsections (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under RCW 62A.9A-106 rank according to priority in time of:

(A) If the collateral is a security, obtaining control;

(B) If the collateral is a security entitlement carried in a securities account and:

(i) If the secured party obtained control under RCW 62A.8-106(4)(a), the secured party's becoming the person for which the securities account is maintained;

(ii) If the secured party obtained control under RCW 62A.8-106(4)(b), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) If the secured party obtained control through another person under RCW 62A.8-106(4)(c), the time on which pri-

ority would be based under this paragraph if the other person were the secured party; or

(C) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in RCW 62A.9A-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under RCW 62A.9A-313(a) and not by control under RCW 62A.9A-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under RCW 62A.9A-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by RCW 62A.9A-322 and 62A.9A-323. [2011 c 74 § 712; 2001 c 32 § 29; 2000 c 250 § 9A-328.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-335 Accessions. (Effective July 1, 2013.) (a) **Creation of security interest in accession.** A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) **Perfection of security interest.** If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) **Priority of security interest.** Except as otherwise provided in subsection (d) of this section, the other provisions of this part determine the priority of a security interest in an accession.

(d) **Compliance with certificate-of-title statute.** A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under RCW 62A.9A-311(b).

(e) **Removal of accession after default.** After default, subject to Part 6 of this Article, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) **Reimbursement following removal.** A secured party that removes an accession from other goods under subsection (e) of this section shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other

goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse. [2011 c 74 § 713; 2000 c 250 § 9A-335.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-337 Priority of security interests in goods covered by certificate of title. (Effective July 1, 2013.) If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under RCW 62A.9A-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest. [2011 c 74 § 714; 2000 c 250 § 9A-337.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information. (Effective July 1, 2013.) If a security interest or agricultural lien is perfected by a filed financing statement providing information described in RCW 62A.9A-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral. [2011 c 74 § 715; 2000 c 250 § 9A-338.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

SUBPART 4. RIGHTS OF BANK

62A.9A-405 Modification of assigned contract. (Effective July 1, 2013.) (a) **Effect of modification on assignee.** A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d) of this section.

(b) **Applicability of subsection (a) of this section.** Subsection (a) of this section applies to the extent that:

(1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under RCW 62A.9A-406(a).

(c) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable. [2011 c 74 § 716; 2000 c 250 § 9A-405.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-406 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective. (Effective July 1, 2013.) (a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (j) of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e) of this section and RCW 62A.2A-303 and 62A.9A-407, and subject to subsections (h) and (j) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **Inapplicability of subsection (d) of this section to certain sales.** Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under RCW 62A.9A-610 or an acceptance of collateral under RCW 62A.9A-620.

(f) [Reserved]

(g) **Subsection (b)(3) of this section not waivable.** Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subsection (b)(3) of this section.

(h) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

(j)(1) **Inapplicability of subsection (d) of this section to certain transactions.** After July 1, 2003, subsection (d) of this section does not apply to the assignment or transfer of or creation of a security interest in:

(A) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2); or

(B) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4).

(2) This subsection will not affect a transfer of structured settlement payment rights under chapter 19.205 RCW. [2011 c 74 § 301; 2003 c 87 § 1; 2001 c 32 § 34; 2000 c 250 § 9A-406.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Effective date—2003 c 87: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 87 § 3.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective. (Effective July 1, 2013.)

(a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between

an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) **Applicability of subsection (a) of this section to sales of certain rights to payment.** Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under RCW 62A.9A-610 or an acceptance of collateral under RCW 62A.9A-620.

(c) **Legal restrictions on assignment generally ineffective.** A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) **Limitation on ineffectiveness under subsections (a) and (c) of this section.** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) of this section would be effective under law other than this Article but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e)(1) **Inapplicability of subsections (a) and (c) of this section to certain payment intangibles.** After July 1, 2003, subsections (a) and (c) of this section do not apply to the assignment or transfer of or creation of a security interest in:

(A) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2); or

(B) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4).

(2) This subsection will not affect a transfer of structured settlement payment rights under chapter 19.205 RCW. [2011 c 74 § 302; 2003 c 87 § 2; 2000 c 250 § 9A-408.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Effective date—2003 c 87: See note following RCW 62A.9A-406.

SUBPART 1. FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT

62A.9A-503 Name of debtor and secured party. (Effective July 1, 2013.) (a) Sufficiency of debtor's name. A financing statement sufficiently provides the name of the debtor:

(1) Except as otherwise provided in (3) of this subsection (a), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name;

(2) Subject to subsection (f) of this section, if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(3) If the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) Provides, as the name of the debtor:

(i) If the organic record of the trust specifies a name for the trust, the name specified; or

(ii) If the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) In a separate part of the financing statement:

(i) If the name is provided in accordance with (3)(A)(i) of this subsection, indicates that the collateral is held in a trust; or

(ii) If the name is provided in accordance with (3)(A)(ii) of this subsection, provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) If the debtor is an individual, only if the financing statement:

(A) Provides the individual name of the debtor;

(B) Provides the surname and first personal name of the debtor; or

(C) Subject to subsection (g) of this section, provides the name of the individual which is indicated on a driver's license or identification card that this state has issued to the individual and which has not expired; and

(5) In other cases:

(A) If the debtor has a name, only if the financing statement provides the organizational name of the debtor; and

(B) If the debtor does not have a name, only if the financing statement provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) **Additional debtor-related information.** A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under subsection (a)(5)(B) of this section, names of partners, members, associates, or other persons comprising the debtor.

(c) **Debtor's trade name insufficient.** A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) **Representative capacity.** Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) **Multiple debtors and secured parties.** A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) **Name of decedent.** The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (a)(2) of this section.

(g) **Multiple driver's licenses.** If this state has issued to an individual more than one driver's license or identification card of a kind described in subsection (a)(4) of this section, the one that was issued most recently is the one to which subsection (a)(4) of this section refers.

(h) **Definition.** In this section, the "name of the settlor or testator" means:

(1) If the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or

(2) In other cases, the name of the settlor or testator indicated in the trust's organic record. [2011 c 74 § 401; 2000 c 250 § 9A-503.]

Application—Correction of references—Effective date—2011 c 74:
See notes following RCW 62A.9A-102.

62A.9A-505 Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions. (Effective July 1, 2013.)

(a) **Use of terms other than "debtor" and "secured party."** A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in RCW 62A.9A-311(a), using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," "seller," or words of similar import, instead of the terms "secured party" and "debtor."

(b) **Effect of financing statement under subsection (a) of this section.** This part applies to the filing of a financing statement under subsection (a) of this section and, as appropriate, to compliance that is equivalent to filing a financing statement under RCW 62A.9A-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance. [2011 c 74 § 717; 2000 c 250 § 9A-505.]

Application—Correction of references—Effective date—2011 c 74:
See notes following RCW 62A.9A-102.

62A.9A-506 Effect of errors or omissions. (Effective July 1, 2013.) (a) **Minor errors and omissions.** A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) **Financing statement seriously misleading.** Except as otherwise provided in subsection (c) of this section, a financing statement that fails sufficiently to provide the name of the debtor in accordance with RCW 62A.9A-503(a) is seriously misleading.

(c) **Financing statement not seriously misleading.** If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with RCW 62A.9A-503(a), the name provided does not make the financing statement seriously misleading.

(d) **"Debtor's correct name."** For purposes of RCW 62A.9A-508(b), the "debtor's correct name" in subsection (c) of this section means the correct name of the new debtor. [2011 c 74 § 718; 2000 c 250 § 9A-506.]

Application—Correction of references—Effective date—2011 c 74:
See notes following RCW 62A.9A-102.

62A.9A-507 Effect of certain events on effectiveness of financing statement. (Effective July 1, 2013.) (a) **Disposition.** A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or

agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) **Information becoming seriously misleading.** Except as otherwise provided in subsection (c) of this section and RCW 62A.9A-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under RCW 62A.9A-506.

(c) **Change in debtor's name.** If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under RCW 62A.9A-503(a) so that the financing statement becomes seriously misleading under RCW 62A.9A-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the filed financing statement becomes seriously misleading. [2011 c 74 § 402; 2000 c 250 § 9A-507.]

Application—Correction of references—Effective date—2011 c 74:
See notes following RCW 62A.9A-102.

62A.9A-508 Effectiveness of financing statement if new debtor becomes bound by security agreement. (Effective July 1, 2013.) (a) **Financing statement naming original debtor.** Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) **Financing statement becoming seriously misleading.** If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) of this section to be seriously misleading under RCW 62A.9A-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under RCW 62A.9A-203(d); and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under RCW 62A.9A-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) **When section not applicable.** This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under RCW 62A.9A-507(a). [2011 c 74 § 719; 2000 c 250 § 9A-508.]

Application—Correction of references—Effective date—2011 c 74:
See notes following RCW 62A.9A-102.

62A.9A-510 Effectiveness of filed record. (Effective July 1, 2013.) (a) **Filed record effective if authorized.** A

filed record is effective only to the extent that it was filed by a person that may file it under RCW 62A.9A-509.

(b) **Authorization by one secured party of record.** A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) **Continuation statement not timely filed.** A continuation statement that is not filed within the six-month period prescribed by RCW 62A.9A-515(d) is ineffective. [2011 c 74 § 720; 2000 c 250 § 9A-510.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-515 Duration and effectiveness of financing statement; effect of lapsed financing statement. (Effective July 1, 2013.) (a) **Five-year effectiveness.** Except as otherwise provided in subsections (b), (e), (f), and (g) of this section, a filed financing statement is effective for a period of five years after the date of filing.

(b) [Reserved]

(c) **Lapse and continuation of financing statement.** The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) **When continuation statement may be filed.** A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) of this section or the thirty-year period specified in subsection (b) of this section, whichever is applicable.

(e) **Effect of filing continuation statement.** Except as otherwise provided in RCW 62A.9A-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c) of this section, unless, before the lapse, another continuation statement is filed pursuant to subsection (d) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) **Transmitting utility financing statement.** If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) **Record of mortgage as financing statement.** A record of a mortgage that is effective as a financing statement filed as a fixture filing under RCW 62A.9A-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property. [2011 c 74 § 403; 2000 c 250 § 9A-515.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-516 What constitutes filing; effectiveness of filing. (Effective July 1, 2013.) (a) **What constitutes filing.** Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) **Refusal to accept record; filing does not occur.** Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered or, in the case of a filing office described in RCW 62A.9A-501(a)(1), an amount equal to the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or information statement, the record:

(i) Does not identify the initial financing statement as required by RCW 62A.9A-512 or 62A.9A-518, as applicable; or

(ii) Identifies an initial financing statement whose effectiveness has lapsed under RCW 62A.9A-515;

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname; or

(D) In the case of a record filed or recorded in the filing office described in RCW 62A.9A-501(a)(1), the record does not provide a name for the debtor or a sufficient description of the real property to which the record relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor; or

(B) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(6) In the case of an assignment reflected in an initial financing statement under RCW 62A.9A-514(a) or an amendment filed under RCW 62A.9A-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by RCW 62A.9A-515(d).

(c) **Rules applicable to subsection (b) of this section.** For purposes of subsection (b) of this section:

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by RCW 62A.9A-512, 62A.9A-514, or 62A.9A-518, is an initial financing statement.

(d) **Refusal to accept record; record effective as filed record.** A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files. [2011 c 74 § 404; 2001 c 32 § 38; 2000 c 250 § 9A-516.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-518 Claim concerning inaccurate or wrongfully filed record. (Effective July 1, 2013.) (a) **Statement with respect to record indexed under person's name.** A person may file in the filing office an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) **Contents of statement under subsection (a) of this section.** An information statement under subsection (a) of this section must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) **Statement by secured party of record.** A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under RCW 62A.9A-509(d).

(d) **Contents of statement under subsection (c) of this section.** An information statement under subsection (c) of this section must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

62A.9A-521 Uniform form of written financing statement and amendment. (Effective July 1, 2013.) (a) **Initial financing statement form.** A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in RCW 62A.9A-516(b):

UCC FINANCING STATEMENT
FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the person that filed the record was not entitled to do so under RCW 62A.9A-509(d).

(e) **Record not affected by information statement.** The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record. [2011 c 74 § 405; 2000 c 250 § 9A-518.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE

62A.9A-520 Acceptance and refusal to accept record. (Effective July 1, 2013.) (a) **Mandatory refusal to accept record.** The filing office described in RCW 62A.9A-501(a)(2) shall refuse to accept a record for filing for a reason set forth in RCW 62A.9A-516(b). A filing office described in RCW 62A.9A-501(a)(1) shall refuse to accept a record for filing for a reason set forth in RCW 62A.9A-516(b) (1) through (4) and any filing office may refuse to accept a record for filing only for a reason set forth in RCW 62A.9A-516(b).

(b) **Communication concerning refusal.** If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of a filing office described in RCW 62A.9A-501(a)(2), in no event more than two business days after the filing office receives the record.

(c) **When filed financing statement effective.** A filed financing statement satisfying RCW 62A.9A-502 (a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a) of this section. However, RCW 62A.9A-338 applies to a filed financing statement providing information described in RCW 62A.9A-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) **Separate application to multiple debtors.** If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately. [2011 c 74 § 721; 2001 c 32 § 39; 2000 c 250 § 9A-520.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME - provide only **one** Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2. DEBTOR'S NAME - provide only **one** Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY) - provide only **one** secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

4. COLLATERAL: This Financing Statement covers the following collateral:

5. Check **only** if applicable and check only **one** box:
 Collateral is held in Trust (see Instructions)
 being administered by a Decedent's Personal Representative.

6a. Check **only** if applicable and check only **one** box:
 Public-Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility

6b. Check **only** if applicable and check only **one** box:
 Agricultural Lien Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable):
 Lessee/Lessor Cosignee/Cosignor Seller/Buyer Bailee/Bailor Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA

[UCC FINANCING STATEMENT (FORM UCC1)] (REV. 09/30/10)

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR (same as item 1a or 1b on Financing Statement)

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. ADDITIONAL DEBTOR'S NAME - provide only **one** Debtor name (10a or 10b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

10a. ORGANIZATION'S NAME (exact, full name, without any modifications)

OR

- 10b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX
- 10c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
11. ADDITIONAL SECURED PARTY'S NAME or ASSIGNOR SECURED PARTY'S NAME - provide only one name (11a or 11b)
- 11a. ORGANIZATION'S NAME
- OR
- 11b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
- 11c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)
13. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS (if applicable)
14. This FINANCING STATEMENT:
 covers timber to be cut covers as-extracted collateral is filed as a fixture filing
15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest)
16. Description of real estate
17. Miscellaneous

[UCC FINANCING STATEMENT ADDENDUM (FORM UCC1Ad)] (REV. 09/30/10)

(b) Amendment form. A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in RCW 62A.9A-516(b):

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

- A. NAME & PHONE OF CONTACT AT FILER (optional)
- B. E-MAIL CONTACT AT FILER (optional)
- C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

- 1a. INITIAL FINANCING STATEMENT FILE NUMBER
- 1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Filer: **attach** Amendment Addendum (Form UCC3 Ad) **and** provide Debtor's name in item 13.
2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement.
3. ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, **and** address of Assignee in item 7c and name of Assignor in item 9. For partial assignment, complete items 7 and 9 **and also** indicate affected collateral in item 8.
4. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.
5. PARTY INFORMATION CHANGE:
 Check **one** of these two boxes:
 This Change affects Debtor or Secured Party of record
- AND**
 Check **one** of these three boxes to:
 CHANGE name and/or address: Complete item 6a or 6b; **and** item 7a or 7b **and** item 7c.
 ADD name: Complete item 7a or 7b, **and** item 7c.
 DELETE name: Give record name to be deleted in item 6a or 6b.
6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only **one** name (6a or 6b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)
- 6a. ORGANIZATION'S NAME
- OR
- 6b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only **one** name (7a or 7b) (use exact full name; do not omit, modify, or abbreviate any word in the Debtor's name)
- 7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

8. COLLATERAL CHANGE:
Also check **one** of these four boxes:
 ADD collateral DELETE collateral RESTATE covered collateral ASSIGN collateral
Indicate collateral:

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT - provide only one name (9a or 9b) (name of assignor, if this is an Assignment). If this is an Amendment authorized by a DEBTOR, check here and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

10. OPTIONAL FILER REFERENCE DATA

[UCC FINANCING STATEMENT AMENDMENT (FORM UCC3)] (REV. 09/30/10)

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER (same as item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction for item 13 - insert only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral)

15. This FINANCING STATEMENT AMENDMENT:

covers timber to be cut covers as-extracted collateral is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest)

17. Description of real estate

18. MISCELLANEOUS:

UCC FINANCING STATEMENT AMENDMENT ADDENDUM (FORM UCC1) (REV. 09/30/10)

[2011 c 74 § 406; 2000 c 250 § 9A-521.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

**SUBPART 1. DEFAULT AND ENFORCEMENT
BY SECURITY INTEREST**

62A.9A-601 Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes. (Effective July 1, 2013.) (a) **Rights of secured party after default.** After default, a secured party has the rights provided in this part and, except as otherwise provided in RCW 62A.9A-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) **Rights and duties of secured party in possession or control.** A secured party in possession of collateral or control of collateral under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 has the rights and duties provided in RCW 62A.9A-207.

(c) **Rights cumulative; simultaneous exercise.** The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) **Rights of debtor and obligor.** Except as otherwise provided in subsection (g) of this section and RCW 62A.9A-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) **Lien of levy after judgment.** If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) **Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

(g) **Consignor or buyer of certain rights to payment.** Except as otherwise provided in RCW 62A.9A-607(c), this part imposes no duties upon a secured party that is a consignee or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(h) **Enforcement restrictions.** All rights and remedies provided in this part with respect to promissory notes or an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, are subject to RCW 62A.9A-408 to the extent applicable. [2011 c 74 § 722; 2000 c 250 § 9A-601.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-602 Waiver and variance of rights and duties. (*Effective July 1, 2013.*) Except as otherwise provided in RCW 62A.9A-624, to the extent that they give rights to an obligor (other than a secondary obligor) or a debtor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) RCW 62A.9A-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;

(2) RCW 62A.9A-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) RCW 62A.9A-607(c), which deals with collection and enforcement of collateral;

(4) RCW 62A.9A-608(a) and 62A.9A-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) RCW 62A.9A-608(a) and 62A.9A-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) RCW 62A.9A-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) RCW 62A.9A-610(b), 62A.9A-611, 62A.9A-613, and 62A.9A-614, which deal with disposition of collateral;

(8) [Reserved]

(9) RCW 62A.9A-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) RCW 62A.9A-623, which deals with redemption of collateral;

(12) RCW 62A.9A-624, which deals with permissible waivers; and

(13) RCW 62A.9A-625 and 62A.9A-626, which deal with the secured party's liability for failure to comply with this Article. [2011 c 74 § 723; 2000 c 250 § 9A-602.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-607 Collection and enforcement by secured party. (*Effective July 1, 2013.*) (a) **Collection and enforcement generally.** If so agreed, and in any event after default, a secured party:

(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) May take any proceeds to which the secured party is entitled under RCW 62A.9A-315;

(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under RCW 62A.9A-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under RCW 62A.9A-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) **Nonjudicial enforcement of mortgage.** If necessary to enable a secured party to exercise, under subsection (a)(3) of this section, the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded the secured party's sworn affidavit stating that:

(1) Default has occurred with respect to the obligation secured by the mortgage;

(2) A copy of the security agreement that creates or provides for a security interest in the obligations secured by the mortgage is attached to the affidavit; and

(3) The secured party is entitled to enforce the mortgage nonjudicially.

If the secured party's affidavit and attached copy of the security agreement in the form prescribed by chapter 65.04 RCW are presented with the applicable fee to the office in which a record of the mortgage is recorded, the affidavit and attached copy of the security agreement shall be recorded pursuant to RCW 65.04.030(3).

(c) **Commercially reasonable collection and enforcement.** A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) **Expenses of collection and enforcement.** A secured party may deduct from the collections made pursuant to subsection (c) of this section reasonable expenses of collection and enforcement, including reasonable attorneys' fees and legal expenses incurred by the secured party.

(e) **Duties to secured party not affected.** This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party. [2011 c 74 § 501; 2000 c 250 § 9A-607.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-611 Notification before disposition of collateral. (Effective July 1, 2013.) (a) "Notification date." In this section, "notification date" means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) **Notification of disposition required.** Except as otherwise provided in subsection (d) of this section, a secured party that disposes of collateral under RCW 62A.9A-610 shall send to the persons specified in subsection (c) of this section a reasonable authenticated notification of disposition.

(c) **Persons to be notified.** To comply with subsection (b) of this section, the secured party shall send an authenticated notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

(A) Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) Identified the collateral;

(ii) Was indexed under the debtor's name as of that date; and

(iii) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(B) Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in RCW 62A.9A-311(a).

(d) **Subsection (b) of this section inapplicable: Perishable collateral; recognized market.** Subsection (b) of this section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) **Compliance with subsection (c)(3)(A) of this section.** A secured party complies with the requirement for notification prescribed by subsection (c)(3)(A) of this section if:

(1) Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a

commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(A) of this section; and

(2) Before the notification date, the secured party:

(A) Did not receive a response to the request for information; or

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral. [2011 c 74 § 724; 2000 c 250 § 9A-611.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-621 Notification of proposal to accept collateral. (Effective July 1, 2013.) (a) **Persons to which proposal to be sent.** A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) Any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) Identified the collateral;

(B) Was indexed under the debtor's name as of that date; and

(C) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(2) Any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in RCW 62A.9A-311(a).

(b) **Proposal to be sent to secondary obligor in partial satisfaction.** A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a) of this section. [2011 c 74 § 725; 2000 c 250 § 9A-621.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

SUBPART 2. NONCOMPLIANCE WITH ARTICLE

62A.9A-625 Remedies for secured party's failure to comply with Article. (Effective July 1, 2013.) (a) **Judicial orders concerning noncompliance.** If it is established that a secured party is not proceeding in accordance with this Article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) **Damages for noncompliance.** Subject to subsections (c), (d), and (f) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this Article or by filing a false statement under RCW 62A.9A-607(b) or 62A.9A-619. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) **Persons entitled to recover damages; statutory damages in consumer-goods transaction.** Except as otherwise provided in RCW 62A.9A-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) of this section for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

(d) **Recovery when deficiency eliminated or reduced.** A debtor whose deficiency is eliminated under RCW 62A.9A-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor may not recover under subsection (b) or (c)(2) of this section for non-compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance to the extent that its deficiency is eliminated or reduced under RCW 62A.9A-626.

(e) **Statutory damages: Noncompliance with specified provisions.** In addition to any damages recoverable under subsection (b) of this section, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars in each case from a person that:

- (1) Fails to comply with RCW 62A.9A-208;
- (2) Fails to comply with RCW 62A.9A-209;
- (3) Files a record that the person is not entitled to file under RCW 62A.9A-509(a);
- (4) Fails to cause the secured party of record to file or send a termination statement as required by RCW 62A.9A-513 (a) or (c) within twenty days after the secured party receives an authenticated demand from a debtor;
- (5) Fails to comply with RCW 62A.9A-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or
- (6) Fails to comply with RCW 62A.9A-616(b)(2).

(f) **Statutory damages: Noncompliance with RCW 62A.9A-210.** A debtor or consumer obligor may recover damages under subsection (b) of this section and, in addition, five hundred dollars in each case from a person that, without reasonable cause, fails to comply with a request under RCW 62A.9A-210. A recipient of a request under RCW 62A.9A-210 which never claimed an interest in the collateral or obligations that are the subject of a request under RCW 62A.9A-210 has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) **Limitation of security interest: Noncompliance with RCW 62A.9A-210.** If a secured party fails to comply with a request regarding a list of collateral or a statement of account under RCW 62A.9A-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure. [2011 c 74 § 726; 2001 c 32 § 44; 2000 c 250 § 9A-625.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-628 Nonliability and limitation on liability of secured party; liability of secondary obligor. (*Effective*

[2011 RCW Supp—page 1274]

July 1, 2013.) (a) **Limitation of liability of secured party for noncompliance with article.** Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Article; and

(2) The secured party's failure to comply with this Article does not affect the liability of the person for a deficiency.

(b) **Limitation of liability based on status as secured party.** A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

- (A) That the person is a debtor or obligor;
- (B) The identity of the person; and
- (C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

- (A) That the person is a debtor; and
- (B) The identity of the person.

(c) **Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction.** A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

- (1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or
- (2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) **Limitation of liability for statutory damages.** A secured party is not liable to any person under RCW 62A.9A-625(c)(2) for its failure to comply with RCW 62A.9A-616.

(e) **Limitation of multiple liability for statutory damages.** A secured party is not liable under RCW 62A.9A-625(c)(2) more than once with respect to any one secured obligation. [2011 c 74 § 727; 2001 c 32 § 45; 2000 c 250 § 9A-628.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-803 Security interest perfected before effective date. (*Effective July 1, 2013.*) (a) **Continuing perfection: Perfection requirements satisfied.** A security interest that is a perfected security interest immediately before July 1, 2013, is a perfected security interest under chapter 62A.9A RCW if, on July 1, 2013, the applicable requirements for attachment and perfection under chapter 62A.9A RCW as of July 1, 2013, are satisfied without further action.

(b) **Continuing perfection: Perfection requirements not satisfied.** Except as otherwise provided in RCW 62A.9A-805, if, immediately before July 1, 2013, a security

interest is a perfected security interest, but the applicable requirements for perfection under chapter 62A.9A RCW as of July 1, 2013, are not satisfied when this section takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under chapter 62A.9A RCW as of July 1, 2013, are satisfied within one year after July 1, 2013. [2011 c 74 § 602.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-804 Security interest unperfected before effective date. (Effective July 1, 2013.) A security interest that is an unperfected security interest immediately before July 1, 2013, becomes a perfected security interest:

(a) Without further action, on July 1, 2013, if the applicable requirements for perfection under chapter 62A.9A RCW are satisfied before or at that time; or

(b) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time. [2011 c 74 § 603.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-805 Effectiveness of action taken before effective date. (Effective July 1, 2013.) (a) Preeffective date filing effective. The filing of a financing statement before July 1, 2013, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under chapter 62A.9A RCW as of July 1, 2013.

(b) **When preeffective date filing becomes ineffective.** Chapter 74, Laws of 2011 does not render ineffective an effective financing statement that, before July 1, 2013, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in chapter 62A.9A RCW as it existed before July 1, 2013. However, except as otherwise provided in subsections (c) and (d) of this section and RCW 62A.9A-806, the financing statement ceases to be effective:

(1) If the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had this section not taken effect; or

(2) If the financing statement is filed in another jurisdiction, at the earlier of:

(A) The time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) **Continuation statement.** The filing of a continuation statement after July 1, 2013, does not continue the effectiveness of a financing statement filed before July 1, 2013. However, upon the timely filing of a continuation statement after July 1, 2013, and in accordance with the law of the jurisdiction governing perfection as provided in chapter 62A.9A RCW as of July 1, 2013, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2013, continues for the period provided by the law of that jurisdiction.

(d) **Application of subsection (b)(2)(B) to transmitting utility financing statement.** Subsection (b)(2)(B) of this section applies to a financing statement that, before July 1, 2013, is filed against a transmitting utility and satisfies the

applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in chapter 62A.9A RCW as it existed before July 1, 2013, only to the extent that chapter 62A.9A RCW as of July 1, 2013, provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) **Application of Part 4.** A financing statement that includes a financing statement filed before July 1, 2013, and a continuation statement filed after July 1, 2013, is effective only to the extent that it satisfies the requirements of RCW 62A.9A-502, 62A.9A-503, 62A.9A-507, 62A.9A-515, 62A.9A-516, 62A.9A-518, and 62A.9A-521 as of July 1, 2013, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of RCW 62A.9A-503(a)(2) as of July 1, 2013. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of RCW 62A.9A-503(a)(3) as of July 1, 2013. [2011 c 74 § 604.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-806 When initial financing statement suffices to continue effectiveness of financing statement. (Effective July 1, 2013.) (a) Initial financing statement in lieu of continuation statement. The filing of an initial financing statement in the office specified in RCW 62A.9A-501 continues the effectiveness of a financing statement filed before July 1, 2013, if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under chapter 62A.9A RCW as of July 1, 2013;

(2) The preeffective date financing statement was filed in an office in another state; and

(3) The initial financing statement satisfies subsection (c) of this section.

(b) **Period of continued effectiveness.** The filing of an initial financing statement under subsection (a) of this section continues the effectiveness of the preeffective date financing statement:

(1) If the initial financing statement is filed before July 1, 2013, for the period provided in RCW 62A.9A-515, as it existed before July 1, 2013, with respect to an initial financing statement; and

(2) If the initial financing statement is filed after July 1, 2013, for the period provided in RCW 62A.9A-515 as of July 1, 2013, with respect to an initial financing statement.

(c) **Requirements for initial financing statement under subsection (a) of this section.** To be effective for purposes of subsection (a) of this section, an initial financing statement must:

(1) Beginning on July 1, 2013, satisfy the requirements of RCW 62A.9A-502, 62A.9A-503, 62A.9A-507, 62A.9A-515, 62A.9A-516, 62A.9A-518, and 62A.9A-521 for an initial financing statement;

(2) Identify the preeffective date financing statement by indicating the office in which the financing statement was

filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the preeffective date financing statement remains effective. [2011 c 74 § 605.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-807 Amendment of preeffective date financing statement. (Effective July 1, 2013.) (a) "**Preeffective date financing statement.**" For the purposes of this section, "preeffective date financing statement" means a financing statement filed before July 1, 2013.

(b) **Applicable law.** After July 1, 2013, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a preeffective date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in chapter 62A.9A RCW as of July 1, 2013. However, the effectiveness of a preeffective date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) **Method of amending: General rule.** Except as otherwise provided in subsection (d) of this section, if the law of this state governs perfection of a security interest, the information in a preeffective date financing statement may be amended after July 1, 2013, only if:

(1) The preeffective date financing statement and an amendment are filed in the office specified in RCW 62A.9A-501;

(2) An amendment is filed in the office specified in RCW 62A.9A-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies RCW 62A.9A-806(c); or

(3) An initial financing statement that provides the information as amended and satisfies RCW 62A.9A-806(c) is filed in the office specified in RCW 62A.9A-501.

(d) **Method of amending: Continuation.** If the law of this state governs perfection of a security interest, the effectiveness of a preeffective date financing statement may be continued only under RCW 62A.9A-805 (c) or (e) or 62A.9A-806.

(e) **Method of amending: Additional termination rule.** Whether or not the law of this state governs perfection of a security interest, the effectiveness of a preeffective date financing statement filed in this state may be terminated after July 1, 2013, by filing a termination statement in the office in which the preeffective date financing statement is filed, unless an initial financing statement that satisfies RCW 62A.9A-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in chapter 62A.9A RCW as of July 1, 2013, as the office in which to file a financing statement. [2011 c 74 § 606.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-808 Person entitled to file initial financing statement or continuation statement. (Effective July 1, 2013.) A person may file an initial financing statement or a continuation statement under this part if:

(a) The secured party of record authorizes the filing; and

(b) The filing is necessary under this part:

(1) To continue the effectiveness of a financing statement filed before July 1, 2013; or

(2) To perfect or continue the perfection of a security interest. [2011 c 74 § 607.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

62A.9A-809 Priority. (Effective July 1, 2013.) Chapter 74, Laws of 2011 determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2013, chapter 62A.9A RCW as it existed before July 1, 2013, determines priority. [2011 c 74 § 608.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Title 63

PERSONAL PROPERTY

Chapters

63.29 Uniform unclaimed property act.

Chapter 63.29 RCW

UNIFORM UNCLAIMED PROPERTY ACT

Sections

63.29.020	Property presumed abandoned—General rule—Exceptions.
63.29.340	Interest and penalties.

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

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

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

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

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

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

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

(6) This chapter does not apply to a gift certificate subject to the prohibition against expiration dates under RCW

19.240.020 or to a gift certificate subject to RCW 19.240.030 through 19.240.060. However, this chapter applies to gift certificates presumed abandoned under RCW 63.29.110.

(7) Except as provided in RCW 63.29.350, this chapter does not apply to excess proceeds held by counties, cities, towns, and other municipal or quasi-municipal corporations from foreclosures for delinquent property taxes, assessments, or other liens.

(8)(a) This chapter does not apply to a premium paid by an agricultural fair by check.

(b) For the purposes of this subsection the following definitions apply:

(i) "Agricultural fair" means a fair or exhibition that is intended to promote agriculture by including a balanced variety of exhibits of livestock and agricultural products, as well as related manufactured products and arts, including: Products of the farm home and educational contests, displays, and demonstrations designed to train youth and to promote the welfare of farmers and rural living; and

(ii) "Premium" means an amount paid for exhibits and educational contests, displays, and demonstrations of an educational nature. A "premium" does not include judges' fees and expenses; livestock sale revenues; or prizes or amounts paid for promotion or entertainment activities such as queen contests, parades, dances, rodeos, and races. [2011 c 116 § 1; 2010 c 29 § 1. Prior: 2005 c 502 § 3; 2005 c 367 § 1; 2004 c 168 § 14; 2003 1st sp.s. c 13 § 1; 1992 c 122 § 1; 1988 c 226 § 2; 1983 c 179 § 2.]

Effective date—2005 c 502: See note following RCW 1.12.070.

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

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

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

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

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

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

(3) A person who willfully refuses after written demand by the department to pay or deliver property to the department as required under this chapter or who enters into a contract to avoid the duties of this chapter is guilty of a gross

misdeemeanor and upon conviction may be punished by a fine of not more than one thousand dollars or imprisonment for up to three hundred sixty-four days, or both. [2011 c 96 § 45. Prior: 1996 c 149 § 11; 1996 c 45 § 4; 1983 c 179 § 34.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

Title 64

REAL PROPERTY AND CONVEYANCES

Chapters

- 64.06 Real property transfers—Sellers' disclosures.
64.34 Condominium act.
64.36 Timeshare regulation.
64.38 Homeowners' associations.
64.44 Contaminated properties.
64.60 Private transfer fee obligation act.

Chapter 64.06 RCW

REAL PROPERTY TRANSFERS—SELLERS' DISCLOSURES

Sections

- 64.06.015 Unimproved residential real property—Seller's duty—Format of disclosure statement—Minimum information.
64.06.020 Improved residential real property—Seller's duty—Format of disclosure statement—Minimum information.

64.06.015 Unimproved residential real property—Seller's duty—Format of disclosure statement—Minimum information. (1) In a transaction for the sale of unimproved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	C. If the property is connected to an on-site sewage system: * (1) Was a permit issued for its construction?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	A. Is there a homeowners' association? Name of association and contact information for an officer, director, employee, or other authorized agent, if any, who may provide the association's financial statements, minutes, bylaws, fining policy, and other information that is not publicly available:
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* (2) Was it approved by the local health department or district following its construction?			
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(3) Is the septic system a pressurized system?				B. Are there regular periodic assessments: \$. . . per <input type="checkbox"/> Month <input type="checkbox"/> Year <input type="checkbox"/> Other
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(4) Is the septic system a gravity system?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*C. Are there any pending special assessments?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* (5) Have there been any changes or repairs to the on-site sewage system?				*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(6) Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	9. OTHER FACTS
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* (7) Does the on-site sewage system require monitoring and maintenance services more frequently than once a year?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*A. Are there any disagreements, disputes, encroachments, or legal actions concerning the property?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	4. ELECTRICAL/GAS				*B. Does the property have any plants or wildlife that are designated as species of concern, or listed as threatened or endangered by the government?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	A. Is the property served by natural gas?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*C. Is the property classified or designated as forest land or open space?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	B. Is there a connection charge for gas?				D. Do you have a forest management plan? If yes, attach.
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	C. Is the property served by electricity?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*E. Have any development-related permit applications been submitted to any government agencies?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	D. Is there a connection charge for electricity?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	If the answer to E is "yes," what is the status or outcome of those applications?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*E. Are there any electrical problems on the property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	F. Is the property located within a city, county, or district or within a department of natural resources fire protection zone that provides fire protection services?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	5. FLOODING				10. FULL DISCLOSURE BY SELLERS
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	A. Is the property located in a government designated flood zone or floodplain?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	A. Other conditions or defects: *Are there any other existing material defects affecting the property that a prospective buyer should know about?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	6. SOIL STABILITY				B. Verification: The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*A. Are there any settlement, earth movement, slides, or similar soil problems on the property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	DATE SELLER SELLER NOTICE TO BUYER
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	7. ENVIRONMENTAL				INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	II. BUYER'S ACKNOWLEDGMENT
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*B. Does any part of the property contain fill dirt, waste, or other fill material?				A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?				B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*E. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?				D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*F. Has the property been used for commercial or industrial purposes?				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*G. Is there any soil or groundwater contamination?				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*H. Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*I. Has the property been used as a legal or illegal dumping site?				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*J. Has the property been used as an illegal drug manufacturing site?				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*K. Are there any radio towers that cause interference with cellular telephone reception?				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	8. HOMEOWNERS' ASSOCIATION/Common Interests				

- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2011 c 200 § 3. Prior: 2009 c 505 § 2; 2009 c 130 § 1; 2007 c 107 § 5.]

Application—2009 c 505: See note following RCW 64.06.005.

Findings—Intent—2007 c 107: "(1) The legislature finds that:

(a) Some purchasers of residential property have been financially ruined, and their health threatened, by the discovery of toxic materials buried or otherwise hidden on the property, that was not disclosed by the seller who had actual knowledge of the presence of such materials before the sale;

(b) Current law exempts some sellers from legal responsibility to disclose what they know about the presence of toxic materials on unimproved property they are selling for residential purposes; and

(c) Seller disclosure statements provide information of fundamental importance to a buyer to help the buyer determine whether the property has health and safety characteristics suitable for residential use and whether the buyer can financially afford the clean-up costs and related legal costs.

(2) The legislature intends that:

(a) Purchasers of unimproved property intended to be used for residential purposes be entitled to receive from the seller information known by the seller about toxic materials on or buried in the property;

(b) There be no legal exemptions from such disclosure in the interests of fairness and transparency in residential property sales transactions; and

(c) Separate residential property sales disclosure forms be used for improved and unimproved property, to assist with transparency in property transactions." [2007 c 107 § 1.]

64.06.020 Improved residential real property—Seller's duty—Format of disclosure statement—Minimum information. (1) In a transaction for the sale of improved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a

completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller is/ is not occupying the property.

Yes No Don't know

*(a) If yes, has all or any portion of the water right not been used for five or more successive years?

I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

Yes No Don't know

*(b) If so, is the certificate available? (If yes, please attach a copy.)

Yes No Don't know

*(c) If so, has the water right permit, certificate, or claim been assigned, transferred, or changed?

Yes No Don't know

1. TITLE

A. Do you have legal authority to sell the property? If no, please explain.

Yes No Don't know

*B. Is title to the property subject to any of the following?

- (1) First right of refusal
(2) Option
(3) Lease or rental agreement
(4) Life estate?

Yes No Don't know

*(2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? If so, please identify the entity that supplies water to the property:

Yes No Don't know

*C. Are there any encroachments, boundary agreements, or boundary disputes?

Yes No Don't know

C. Outdoor Sprinkler System

(1) Is there an outdoor sprinkler system for the property?

Yes No Don't know

*D. Is there a private road or easement agreement for access to the property?

Yes No Don't know

*(2) If yes, are there any defects in the system?

Yes No Don't know

*E. Are there any rights-of-way, easements, or access limitations that may affect the Buyer's use of the property?

Yes No Don't know

*(3) If yes, is the sprinkler system connected to irrigation water?

Yes No Don't know

*F. Are there any written agreements for joint maintenance of an easement or right-of-way?

3. SEWER/ON-SITE SEWAGE SYSTEM

A. The property is served by:

- Public sewer system,
 On-site sewage system (including pipes, tanks, drainfields, and all other component parts)
 Other disposal system, please describe:

Yes No Don't know

*G. Is there any study, survey project, or notice that would adversely affect the property?

Yes No Don't know

B. If public sewer system service is available to the property, is the house connected to the sewer main? If no, please explain.

Yes No Don't know

*H. Are there any pending or existing assessments against the property?

Yes No Don't know

*C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?

Yes No Don't know

*I. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?

Yes No Don't know

D. If the property is connected to an on-site sewage system:

Yes No Don't know

*J. Is there a boundary survey for the property?

Yes No Don't know

*(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction? (2) When was it last pumped?

Yes No Don't know

*K. Are there any covenants, conditions, or restrictions recorded against the property?

Yes No Don't know

*(3) Are there any defects in the operation of the on-site sewage system? (4) When was it last inspected?

2. WATER

A. Household Water

(1) The source of water for the property is:

- Private or publicly owned water system
 Private well serving only the subject property
* Other water system

Yes No Don't know

*If shared, are there any written agreements?

Yes No Don't know

By whom:

Yes No Don't know

*(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?

Yes No Don't know

(5) For how many bedrooms was the on-site sewage system approved? bedrooms

Yes No Don't know

*(3) Are there any problems or repairs needed? (4) During your ownership, has the source provided an adequate year-round supply of potable water? If no, please explain.

Yes No Don't know

E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system? If no, please explain:

Yes No Don't know

*(5) Are there any water treatment systems for the property? If yes, are they Leased Owned

Yes No Don't know

*F. Have there been any changes or repairs to the on-site sewage system?

Yes No Don't know

*(6) Are there any water rights for the property associated with its domestic water supply, such as a water right permit, certificate, or claim?

Yes No Don't know

G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain.

Yes No Don't know

(a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed? (b) If yes, has all or any portion of the water right not been used for five or more successive years?

Yes No Don't know

*H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year?

Yes No Don't know

*(7) Are there any defects in the operation of the water system (e.g. pipes, tank, pump, etc.)?

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES

B. Irrigation Water

(1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim?

Yes No Don't know

4. STRUCTURAL

*A. Has the roof leaked within the last five years?

Yes No Don't know

Yes No Don't know

*B. Has the basement flooded or leaked?

- Yes No Don't know

*C. Have there been any conversions, additions, or remodeling?
 *(1) If yes, were all building permits obtained?
 *(2) If yes, were all final inspections obtained?
 D. Do you know the age of the house? If yes, year of original construction:

 *E. Has there been any settling, slippage, or sliding of the property or its improvements?
 *F. Are there any defects with the following: (If yes, please check applicable items and explain.)

- | | | |
|--|---|---|
| <input type="checkbox"/> Foundations | <input type="checkbox"/> Decks | <input type="checkbox"/> Exterior Walls |
| <input type="checkbox"/> Chimneys | <input type="checkbox"/> Interior Walls | <input type="checkbox"/> Fire Alarm |
| <input type="checkbox"/> Doors | <input type="checkbox"/> Windows | <input type="checkbox"/> Patio |
| <input type="checkbox"/> Ceilings | <input type="checkbox"/> Slab Floors | <input type="checkbox"/> Driveways |
| <input type="checkbox"/> Pools | <input type="checkbox"/> Hot Tub | <input type="checkbox"/> Sauna |
| <input type="checkbox"/> Sidewalks | <input type="checkbox"/> Outbuildings | <input type="checkbox"/> Fireplaces |
| <input type="checkbox"/> Garage Floors | <input type="checkbox"/> Walkways | <input type="checkbox"/> Siding |
| <input type="checkbox"/> Other | <input type="checkbox"/> Wood Stoves | |

- Yes No Don't know

*G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed?
 H. During your ownership, has the property had any wood destroying organism or pest infestation?
 I. Is the attic insulated?
 J. Is the basement insulated?

5. SYSTEMS AND FIXTURES

*A. If any of the following systems or fixtures are included with the transfer, are there any defects? If yes, please explain.

- Yes No Don't know

- Electrical system, including wiring, switches, outlets, and service
- Plumbing system, including pipes, faucets, fixtures, and toilets
- Hot water tank
- Garbage disposal
- Appliances
- Sump pump
- Heating and cooling systems
- Security system
- Owned Leased
- Other

- Yes No Don't know
- Yes No Don't know
- Yes No Don't know

*B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.)
 Security system
 Tanks (type):
 Satellite dish
 Other:

- Yes No Don't know

*C. Are any of the following kinds of wood burning appliances present at the property?
 (1) Wood stove?
 (2) Fireplace insert?
 (3) Pellet stove?
 (4) Fireplace?
 If yes, are all of the (1) wood stoves or (2) fireplace inserts certified by the U.S. Environmental Protection Agency as clean burning appliances to improve air quality and public health?

- Yes No Don't know

D. Is the property located within a city, county, or district or within a department of natural resources fire protection zone that provides fire protection services?

6. HOMEOWNERS' ASSOCIATION/COMMON INTERESTS

- Yes No Don't know

A. Is there a Homeowners' Association? Name of Association and contact information for an officer, director, employee, or other authorized agent, if any, who may provide the association's financial statements, minutes, bylaws, firing policy, and other information that is not publicly available:

- Yes No Don't know
- Yes No Don't know
- Yes No Don't know

B. Are there regular periodic assessments:
 \$. . . per Month Year
 Other

- Yes No Don't know

*C. Are there any pending special assessments?
 *D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

- Yes No Don't know

7. ENVIRONMENTAL
 *A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?

- Yes No Don't know

*B. Does any part of the property contain fill dirt, waste, or other fill material?

- Yes No Don't know

*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

- Yes No Don't know

D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?

- Yes No Don't know

*E. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

- Yes No Don't know

*F. Has the property been used for commercial or industrial purposes?

- Yes No Don't know

*G. Is there any soil or groundwater contamination?

- Yes No Don't know

*H. Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?

- Yes No Don't know

*I. Has the property been used as a legal or illegal dumping site?

- Yes No Don't know

*J. Has the property been used as an illegal drug manufacturing site?

- Yes No Don't know

*K. Are there any radio towers in the area that cause interference with cellular telephone reception?

8. MANUFACTURED AND MOBILE HOMES

If the property includes a manufactured or mobile home,

- Yes No Don't know

*A. Did you make any alterations to the home? If yes, please describe the alterations:

- Yes No Don't know

*B. Did any previous owner make any alterations to the home?

- Yes No Don't know

*C. If alterations were made, were permits or variances for these alterations obtained?

9. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

- Yes No Don't know

*Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER

Chapter 64.34 RCW
CONDOMINIUM ACT

NOTICE TO THE BUYER
INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2011 c 200 § 4. Prior: 2009 c 505 § 3; 2009 c 130 § 2; 2007 c 107 § 4; 2004 c 114 § 1; 2003 c 200 § 1; 1996 c 301 § 2; 1994 c 200 § 3.]

Application—2009 c 505: See note following RCW 64.06.005.

Findings—Intent—2007 c 107: See note following RCW 64.06.015.

Application—Effective date—2004 c 114: See notes following RCW 64.06.021.

Additional notes found at www.leg.wa.gov

Sections

- 64.34.010 Applicability. (Effective January 1, 2012.)
64.34.020 Definitions. (Effective January 1, 2012.)
64.34.308 Board of directors and officers. (Effective January 1, 2012.)
64.34.380 Reserve account—Reserve study—Annual update. (Effective January 1, 2012.)
64.34.382 Reserve study—Contents. (Effective January 1, 2012.)
64.34.384 Reserve account—Withdrawals. (Effective January 1, 2012.)
64.34.425 Resale of unit.

64.34.010 Applicability. (Effective January 1, 2012.)

(1) This chapter applies to all condominiums created within this state after July 1, 1990. RCW 64.34.040 (separate titles and taxation), RCW 64.34.050 (applicability of local ordinances, regulations, and building codes), RCW 64.34.060 (condemnation), RCW 64.34.208 (construction and validity of declaration and bylaws), RCW 64.34.268 (1) through (7) and (10) (termination of condominium), RCW 64.34.212 (description of units), RCW 64.34.304(1) (a) through (f) and (k) through (t) (powers of unit owners' association), RCW 64.34.308(1) (board of directors and officers), RCW 64.34.340 (voting—proxies), RCW 64.34.344 (tort and contract liability), RCW 64.34.354 (notification on sale of unit), RCW 64.34.360(3) (common expenses—assessments), RCW 64.34.364 (lien for assessments), RCW 64.34.372 (association records), RCW 64.34.425 (resales of units), RCW 64.34.455 (effect of violation on rights of action; attorney's fees), RCW 64.34.380 through 64.34.392 (reserve studies and accounts), and RCW 64.34.020 (definitions) to the extent necessary in construing any of those sections, apply to all condominiums created in this state before July 1, 1990; but those sections apply only with respect to events and circumstances occurring after July 1, 1990, and do not invalidate or supersede existing, inconsistent provisions of the declaration, bylaws, or survey maps or plans of those condominiums.

(2) The provisions of chapter 64.32 RCW do not apply to condominiums created after July 1, 1990, and do not invalidate any amendment to the declaration, bylaws, and survey maps and plans of any condominium created before July 1, 1990, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter 64.32 RCW. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter which are not otherwise provided for in the declaration or chapter 64.32 RCW, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(3) This chapter does not apply to condominiums or units located outside this state.

(4) RCW 64.34.400 (applicability—waiver), RCW 64.34.405 (liability for public offering statement requirements), RCW 64.34.410 (public offering statement—general provisions), RCW 64.34.415 (public offering statement—conversion condominiums), RCW 64.34.420 (purchaser's right to cancel), RCW 64.34.430 (escrow of deposits), RCW 64.34.440 (conversion condominiums—notice—tenants-relocation assistance), and RCW 64.34.455 (effect of violations on rights of action—attorney's fees) apply with respect to all sales of units pursuant to purchase agreements entered

into after July 1, 1990, in condominiums created before July 1, 1990, in which as of July 1, 1990, the declarant or an affiliate of the declarant owns or had the right to create at least ten units constituting at least twenty percent of the units in the condominium. [2011 c 189 § 6. Prior: 2008 c 115 § 7; 2008 c 114 § 1; 1993 c 429 § 12; 1992 c 220 § 1; 1989 c 43 § 1-102.]

Effective date—2011 c 189: See note following RCW 64.38.065.

64.34.020 Definitions. (*Effective January 1, 2012.*) In the declaration and bylaws, unless specifically provided otherwise or the context requires otherwise, and in this chapter:

(1) "Affiliate" means any person who controls, is controlled by, or is under common control with the referenced person. A person "controls" another person if the person: (a) Is a general partner, officer, director, or employer of the referenced person; (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the referenced person; (c) controls in any manner the election of a majority of the directors of the referenced person; or (d) has contributed more than twenty percent of the capital of the referenced person. A person "is controlled by" another person if the other person: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Assessment" means all sums chargeable by the association against a unit including, without limitation: (a) Regular and special assessments for common expenses, charges, and fines imposed by the association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the association in connection with the collection of a delinquent owner's account.

(4) "Association" or "unit owners' association" means the unit owners' association organized under RCW 64.34.300.

(5) "Baseline funding plan" means establishing a reserve funding goal of maintaining a reserve account balance above zero dollars throughout the thirty-year study period described under RCW 64.34.380.

(6) "Board of directors" means the body, regardless of name, with primary authority to manage the affairs of the association.

(7) "Common elements" means all portions of a condominium other than the units.

(8) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to RCW 64.34.224.

(9) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(10) "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter.

(11) "Contribution rate" means, in a reserve study as described in RCW 64.34.380, the amount contributed to the reserve account so that the association will have cash reserves to pay major maintenance, repair, or replacement costs without the need of a special assessment.

(12) "Conversion condominium" means a condominium (a) that at any time before creation of the condominium was lawfully occupied wholly or partially by a tenant or subtenant for residential purposes pursuant to a rental agreement, oral or written, express or implied, for which the tenant or subtenant had not received the notice described in (b) of this subsection; or (b) that, at any time within twelve months before the conveyance of, or acceptance of an agreement to convey, any unit therein other than to a declarant or any affiliate of a declarant, was lawfully occupied wholly or partially by a residential tenant of a declarant or an affiliate of a declarant and such tenant was not notified in writing, prior to lawfully occupying a unit or executing a rental agreement, whichever event first occurs, that the unit was part of a condominium and subject to sale. "Conversion condominium" shall not include a condominium in which, before July 1, 1990, any unit therein had been conveyed or been made subject to an agreement to convey to any transferee other than a declarant or an affiliate of a declarant.

(13) "Conveyance" means any transfer of the ownership of a unit, including a transfer by deed or by real estate contract and, with respect to a unit in a leasehold condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

(14) "Dealer" means a person who, together with such person's affiliates, owns or has a right to acquire either six or more units in a condominium or fifty percent or more of the units in a condominium containing more than two units.

(15) "Declarant" means:

(a) Any person who executes as declarant a declaration as defined in subsection (17) of this section; or

(b) Any person who reserves any special declarant right in the declaration; or

(c) Any person who exercises special declarant rights or to whom special declarant rights are transferred; or

(d) Any person who is the owner of a fee interest in the real property which is subjected to the declaration at the time of the recording of an instrument pursuant to RCW 64.34.316 and who directly or through one or more affiliates is materially involved in the construction, marketing, or sale of units in the condominium created by the recording of the instrument.

(16) "Declarant control" means the right of the declarant or persons designated by the declarant to appoint and remove officers and members of the board of directors, or to veto or approve a proposed action of the board or association, pursuant to RCW 64.34.308 (5) or (6).

(17) "Declaration" means the document, however denominated, that creates a condominium by setting forth the information required by RCW 64.34.216 and any amendments to that document.

(18) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (a) Add real property or improvements to a condominium; (b) create units, common elements, or limited common elements within real property included or added to a condominium; (c) subdivide units or convert units into common elements; (d) withdraw real property from a condominium; or (e) reallocate limited common elements with respect to units that have not been conveyed by the declarant.

(19) "Dispose" or "disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(20) "Effective age" means the difference between the estimated useful life and remaining useful life.

(21) "Eligible mortgagee" means the holder of a mortgage on a unit that has filed with the secretary of the association a written request that it be given copies of notices of any action by the association that requires the consent of mortgagees.

(22) "Foreclosure" means a forfeiture or judicial or non-judicial foreclosure of a mortgage or a deed in lieu thereof.

(23) "Full funding plan" means setting a reserve funding goal of achieving one hundred percent fully funded reserves by the end of the thirty-year study period described under RCW 64.34.380, in which the reserve account balance equals the sum of the deteriorated portion of all reserve components.

(24) "Fully funded balance" means the current value of the deteriorated portion, not the total replacement value, of all the reserve components. The fully funded balance for each reserve component is calculated by multiplying the current replacement cost of that reserve component by its effective age, then dividing the result by that reserve component's useful life. The sum total of all reserve components' fully funded balances is the association's fully funded balance.

(25) "Identifying number" means the designation of each unit in a condominium.

(26) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size.

(27) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of RCW 64.34.204 (2) or (4) for the exclusive use of one or more but fewer than all of the units.

(28) "Master association" means an organization described in RCW 64.34.276, whether or not it is also an association described in RCW 64.34.300.

(29) "Mortgage" means a mortgage, deed of trust or real estate contract.

(30) "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

(31) "Purchaser" means any person, other than a declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a unit other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the unit, or (b) as security for an obligation.

(32) "Real property" means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

(33) "Remaining useful life" means the estimated time, in years, before a reserve component will require major maintenance, repair, or replacement to perform its intended function.

(34) "Replacement cost" means the current cost of replacing, repairing, or restoring a reserve component to its original functional condition.

(35) "Reserve component" means a common element whose cost of maintenance, repair, or replacement is infrequent, significant, and impractical to include in an annual budget.

(36) "Reserve study professional" means an independent person who is suitably qualified by knowledge, skill, experience, training, or education to prepare a reserve study in accordance with RCW 64.34.380 and 64.34.382.

(37) "Residential purposes" means use for dwelling or recreational purposes, or both.

(38) "Significant assets" means that the current total cost of major maintenance, repair, and replacement of the reserve components is fifty percent or more of the gross budget of the association, excluding reserve account funds.

(39) "Special declarant rights" means rights reserved for the benefit of a declarant to: (a) Complete improvements indicated on survey maps and plans filed with the declaration under RCW 64.34.232; (b) exercise any development right under RCW 64.34.236; (c) maintain sales offices, management offices, signs advertising the condominium, and models under RCW 64.34.256; (d) use easements through the common elements for the purpose of making improvements within the condominium or within real property which may be added to the condominium under RCW 64.34.260; (e) make the condominium part of a larger condominium or a development under RCW 64.34.280; (f) make the condominium subject to a master association under RCW 64.34.276; or (g) appoint or remove any officer of the association or any master association or any member of the board of directors, or to veto or approve a proposed action of the board or association, during any period of declarant control under RCW 64.34.308(5).

(40) "Timeshare" shall have the meaning specified in the timeshare act, RCW 64.36.010(11).

(41) "Unit" means a physical portion of the condominium designated for separate ownership, the boundaries of

which are described pursuant to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the unit from the condominium.

(42) "Unit owner" means a declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who has an interest in a unit solely as security for an obligation. "Unit owner" means the vendee, not the vendor, of a unit under a real estate contract.

(43) "Useful life" means the estimated time, between years, that major maintenance, repair, or replacement is estimated to occur. [2011 c 189 § 1; 2008 c 115 § 8; 2004 c 201 § 9; 1992 c 220 § 2; 1990 c 166 § 1; 1989 c 43 § 1-103.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2011 c 189: See note following RCW 64.38.065.

64.34.308 Board of directors and officers. (Effective January 1, 2012.) (1) Except as provided in the declaration, the bylaws, subsection (2) of this section, or other provisions of this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors are required to exercise: (a) If appointed by the declarant, the care required of fiduciaries of the unit owners; or (b) if elected by the unit owners, ordinary and reasonable care.

(2) The board of directors shall not act on behalf of the association to amend the declaration in any manner that requires the vote or approval of the unit owners pursuant to RCW 64.34.264, to terminate the condominium pursuant to RCW 64.34.268, or to elect members of the board of directors or determine the qualifications, powers, and duties, or terms of office of members of the board of directors pursuant to subsection (7) of this section; but the board of directors may fill vacancies in its membership for the unexpired portion of any term.

(3) Within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

(4) As part of the summary of the budget provided to all unit owners, the board of directors shall disclose to the unit owners:

(a) The current amount of regular assessments budgeted for contribution to the reserve account, the recommended contribution rate from the reserve study, and the funding plan upon which the recommended contribution rate is based;

(b) If additional regular or special assessments are scheduled to be imposed, the date the assessments are due, the amount of the assessments per each unit per month or year, and the purpose of the assessments;

(c) Based upon the most recent reserve study and other information, whether currently projected reserve account balances will be sufficient at the end of each year to meet the association's obligation for major maintenance, repair, or replacement of reserve components during the next thirty years;

(d) If reserve account balances are not projected to be sufficient, what additional assessments may be necessary to ensure that sufficient reserve account funds will be available each year during the next thirty years, the approximate dates assessments may be due, and the amount of the assessments per unit per month or year;

(e) The estimated amount recommended in the reserve account at the end of the current fiscal year based on the most recent reserve study, the projected reserve account cash balance at the end of the current fiscal year, and the percent funded at the date of the latest reserve study;

(f) The estimated amount recommended in the reserve account based upon the most recent reserve study at the end of each of the next five budget years, the projected reserve account cash balance in each of those years, and the projected percent funded for each of those years; and

(g) If the funding plan approved by the association is implemented, the projected reserve account cash balance in each of the next five budget years and the percent funded for each of those years.

(5)(a) Subject to subsection (6) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may: (i) Appoint and remove the officers and members of the board of directors; or (ii) veto or approve a proposed action of the board or association. A declarant's failure to veto or approve such proposed action in writing within thirty days after receipt of written notice of the proposed action shall be deemed approval by the declarant.

(b) Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent of the units which may be created to unit owners other than a declarant; (ii) two years after the last conveyance or transfer of record of a unit except as security for a debt; (iii) two years after any development right to add new units was last exercised; or (iv) the date on which the declarant records an amendment to the declaration pursuant to which the declarant voluntarily surrenders the right to further appoint and remove officers and members of the board of directors. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period pursuant to (i), (ii), and (iii) of this subsection (5)(b), but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(6) Not later than sixty days after conveyance of twenty-five percent of the units which may be created to unit owners

other than a declarant, at least one member and not less than twenty-five percent of the members of the board of directors must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the board of directors must be elected by unit owners other than the declarant.

(7) Within thirty days after the termination of any period of declarant control, the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The number of directors need not exceed the number of units then in the condominium. The board of directors shall elect the officers. Such members of the board of directors and officers shall take office upon election.

(8) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of the voting power in the association present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. The declarant may not remove any member of the board of directors elected by the unit owners. Prior to the termination of the period of declarant control, the unit owners, other than the declarant, may remove by a two-thirds vote, any director elected by the unit owners. [2011 c 189 § 2; 1992 c 220 § 15; 1989 c 43 § 3-103.]

Effective date—2011 c 189: See note following RCW 64.38.065.

64.34.380 Reserve account—Reserve study—Annual update. (*Effective January 1, 2012.*) (1) An association is encouraged to establish a reserve account with a financial institution to fund major maintenance, repair, and replacement of common elements, including limited common elements that will require major maintenance, repair, or replacement within thirty years. If the association establishes a reserve account, the account must be in the name of the association. The board of directors is responsible for administering the reserve account.

(2) Unless doing so would impose an unreasonable hardship, an association with significant assets shall prepare and update a reserve study, in accordance with the association's governing documents and RCW 64.34.224(1). The initial reserve study must be based upon a visual site inspection conducted by a reserve study professional.

(3) Unless doing so would impose an unreasonable hardship, the association shall update the reserve study annually. At least every three years, an updated reserve study must be prepared and based upon a visual site inspection conducted by a reserve study professional.

(4) This section and RCW 64.34.382 through 64.34.392 apply to condominiums governed by chapter 64.32 RCW or this chapter and intended in whole or in part for residential purposes. These sections do not apply to condominiums consisting solely of units that are restricted in the declaration to nonresidential use. An association's governing documents may contain stricter requirements. [2011 c 189 § 3; 2008 c 115 § 1.]

Effective date—2011 c 189: See note following RCW 64.38.065.

64.34.382 Reserve study—Contents. (*Effective January 1, 2012.*) (1) A reserve study as described in RCW 64.34.380 is supplemental to the association's operating and maintenance budget. In preparing a reserve study, the association shall estimate the anticipated major maintenance, repair, and replacement costs, whose infrequent and significant nature make them impractical to be included in an annual budget.

(2) A reserve study must include:

(a) A reserve component list, including roofing, painting, paving, decks, siding, plumbing, windows, and any other reserve component that would cost more than one percent of the annual budget for major maintenance, repair, or replacement. If one of these reserve components is not included in the reserve study, the study should provide commentary explaining the basis for its exclusion. The study must also include quantities and estimates for the useful life of each reserve component, remaining useful life of each reserve component, and current repair and replacement cost for each component;

(b) The date of the study and a statement that the study meets the requirements of this section;

(c) The following level of reserve study performed:

(i) Level I: Full reserve study funding analysis and plan;

(ii) Level II: Update with visual site inspection; or

(iii) Level III: Update with no visual site inspection;

(d) The association's reserve account balance;

(e) The percentage of the fully funded balance that the reserve account is funded;

(f) Special assessments already implemented or planned;

(g) Interest and inflation assumptions;

(h) Current reserve account contribution rate;

(i) A recommended reserve account contribution rate, a contribution rate for a full funding plan to achieve one hundred percent fully funded reserves by the end of the thirty-year study period, a baseline funding plan to maintain the reserve balance above zero throughout the thirty-year study period without special assessments, and a contribution rate recommended by a reserve study professional;

(j) A projected reserve account balance for thirty years and a funding plan to pay for projected costs from those reserves without reliance on future unplanned special assessments; and

(k) A statement on whether the reserve study was prepared with the assistance of a reserve study professional.

(3) A reserve study shall include the following disclosure:

"This reserve study should be reviewed carefully. It may not include all common and limited common element components that will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a reserve account for the cost of such maintenance, repair, or replacement. The failure to include a component in a reserve study, or to provide contributions to a reserve account for a component, may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a reserve component."

[2011 c 189 § 4; 2008 c 115 § 2.]

Effective date—2011 c 189: See note following RCW 64.38.065.

64.34.384 Reserve account—Withdrawals. (*Effective January 1, 2012.*) An association may withdraw funds from its reserve account to pay for unforeseen or unbudgeted costs that are unrelated to maintenance, repair, or replacement of the reserve components. The board of directors shall record any such withdrawal in the minute books of the association, cause notice of any such withdrawal to be hand delivered or sent prepaid by first-class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, and adopt a repayment schedule not to exceed twenty-four months unless it determines that repayment within twenty-four months would impose an unreasonable burden on the unit owners. Payment for major maintenance, repair, or replacement of the reserve components out of cycle with the reserve study projections or not included in the reserve study may be made from the reserve account without meeting the notification or repayment requirements under this section. [2011 c 189 § 5; 2008 c 115 § 3.]

Effective date—2011 c 189: See note following RCW 64.38.065.

64.34.425 Resale of unit. (1) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under RCW 64.34.400(2), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a resale certificate, signed by an officer or authorized agent of the association and based on the books and records of the association and the actual knowledge of the person signing the certificate, containing:

(a) A statement disclosing any right of first refusal or other restraint on the free alienability of the unit contained in the declaration;

(b) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and a statement of any special assessments that have been levied against the unit which have not been paid even though not yet due;

(c) A statement, which shall be current to within forty-five days, of any common expenses or special assessments against any unit in the condominium that are past due over thirty days;

(d) A statement, which shall be current to within forty-five days, of any obligation of the association which is past due over thirty days;

(e) A statement of any other fees payable by unit owners;

(f) A statement of any anticipated repair or replacement cost in excess of five percent of the annual budget of the association that has been approved by the board of directors;

(g) A statement of the amount of any reserves for repair or replacement and of any portions of those reserves currently designated by the association for any specified projects;

(h) The annual financial statement of the association, including the audit report if it has been prepared, for the year immediately preceding the current year;

(i) A balance sheet and a revenue and expense statement of the association prepared on an accrual basis, which shall be current to within one hundred twenty days;

(j) The current operating budget of the association;

(k) A statement of any unsatisfied judgments against the association and the status of any pending suits or legal proceedings in which the association is a plaintiff or defendant;

(l) A statement describing any insurance coverage provided for the benefit of unit owners;

(m) A statement as to whether there are any alterations or improvements to the unit or to the limited common elements assigned thereto that violate any provision of the declaration;

(n) A statement of the number of units, if any, still owned by the declarant, whether the declarant has transferred control of the association to the unit owners, and the date of such transfer;

(o) A statement as to whether there are any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium;

(p) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof;

(q) A copy of the declaration, the bylaws, the rules or regulations of the association, the association's current reserve study, if any, and any other information reasonably requested by mortgagees of prospective purchasers of units. Information requested generally by the federal national mortgage association, the federal home loan bank board, the government national mortgage association, the veterans administration and the department of housing and urban development shall be deemed reasonable, provided such information is reasonably available to the association;

(r) A statement, as required by RCW 64.35.210, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty; and

(s) If the association does not have a reserve study that has been prepared in accordance with RCW 64.34.380 and 64.34.382 or its governing documents, the following disclosure:

"This association does not have a current reserve study. The lack of a current reserve study poses certain risks to you, the purchaser. Insufficient reserves may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a common element."

(2) The association, within ten days after a request by a unit owner, and subject to payment of any fee imposed pursuant to RCW 64.34.304(1)(I), shall furnish a resale certificate signed by an officer or authorized agent of the association and containing the information necessary to enable the unit owner to comply with this section. For the purposes of this chapter, a reasonable charge for the preparation of a resale certificate may not exceed two hundred seventy-five dollars. The association may charge a unit owner a nominal fee for updating a resale certificate within six months of the unit owner's request. The unit owner shall also sign the certifi-

cate but the unit owner is not liable to the purchaser for any erroneous information provided by the association and included in the certificate unless and to the extent the unit owner had actual knowledge thereof.

(3) A purchaser is not liable for any unpaid assessment or fee against the unit as of the date of the certificate greater than the amount set forth in the certificate prepared by the association unless and to the extent such purchaser had actual knowledge thereof. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchaser's contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever occurs first. [2011 c 48 § 1; 2008 c 115 § 11; 2004 c 201 § 4; 1992 c 220 § 23; 1990 c 166 § 12; 1989 c 43 § 4-107.]

Additional notes found at www.leg.wa.gov

**Chapter 64.36 RCW
TIMESHARE REGULATION**

Sections

64.36.350 Military training or experience.

64.36.350 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 20.]

**Chapter 64.38 RCW
HOMEOWNERS' ASSOCIATIONS**

Sections

64.38.010 Definitions. *(Effective January 1, 2012.)*
 64.38.025 Board of directors—Standard of care—Restrictions—Budget—Removal from board. *(Effective January 1, 2012.)*
 64.38.065 Reserve account and study. *(Effective January 1, 2012.)*
 64.38.070 Reserve study—Requirements. *(Effective January 1, 2012.)*
 64.38.075 Reserve account—Withdrawals. *(Effective January 1, 2012.)*
 64.38.080 Reserve study—Demand for preparation and inclusion in budget. *(Effective January 1, 2012.)*
 64.38.085 Reserve account and study—Liability. *(Effective January 1, 2012.)*
 64.38.090 Reserve study—Exemptions. *(Effective January 1, 2012.)*

64.38.010 Definitions. (Effective January 1, 2012.)
 For purposes of this chapter:

(1) "Assessment" means all sums chargeable to an owner by an association in accordance with RCW 64.38.020.

(2) "Baseline funding plan" means establishing a reserve funding goal of maintaining a reserve account balance above zero dollars throughout the thirty-year study period described under RCW 64.38.065.

(3) "Board of directors" or "board" means the body, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property owned, or otherwise maintained, repaired or administered by the association.

(5) "Common expense" means the costs incurred by the association to exercise any of the powers provided for in this chapter.

(6) "Contribution rate" means, in a reserve study as described in RCW 64.34.380, the amount contributed to the reserve account so that the association will have cash reserves to pay major maintenance, repair, or replacement costs without the need of a special assessment.

(7) "Effective age" means the difference between the estimated useful life and remaining useful life.

(8) "Full funding plan" means setting a reserve funding goal of achieving one hundred percent fully funded reserves by the end of the thirty-year study period described under RCW 64.38.065, in which the reserve account balance equals the sum of the deteriorated portion of all reserve components.

(9) "Fully funded balance" means the current value of the deteriorated portion, not the total replacement value, of all the reserve components. The fully funded balance for each reserve component is calculated by multiplying the current replacement cost of the reserve component by its effective age, then dividing the result by the reserve component's useful life. The sum total of all reserve components' fully funded balances is the association's fully funded balance.

(10) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

(11) "Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member. "Homeowners' association" does not mean an association created under chapter 64.32 or 64.34 RCW.

(12) "Lot" means a physical portion of the real property located within an association's jurisdiction designated for separate ownership.

(13) "Owner" means the owner of a lot, but does not include a person who has an interest in a lot solely as security for an obligation. "Owner" also means the vendee, not the vendor, of a lot under a real estate contract.

(14) "Remaining useful life" means the estimated time, in years, before a reserve component will require major maintenance, repair, or replacement to perform its intended function.

(15) "Replacement cost" means the current cost of replacing, repairing, or restoring a reserve component to its original functional condition.

(16) "Reserve component" means a common element whose cost of maintenance, repair, or replacement is infrequent, significant, and impractical to include in an annual budget.

(17) "Reserve study professional" means an independent person who is suitably qualified by knowledge, skill, experience, training, or education to prepare a reserve study in accordance with RCW 64.34.380 and 64.34.382.

(18) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise to primarily residential or recreational purposes.

(19) "Significant assets" means that the current replacement value of the major reserve components is seventy-five percent or more of the gross budget of the association, excluding the association's reserve account funds.

(20) "Useful life" means the estimated time, between years, that major maintenance, repair, or replacement is estimated to occur. [2011 c 189 § 7; 1995 c 283 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2011 c 189: See note following RCW 64.38.065.

64.38.025 Board of directors—Standard of care—Restrictions—Budget—Removal from board. (Effective January 1, 2012.) (1) Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03 RCW.

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.

(3) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

(4) As part of the summary of the budget provided to all owners, the board of directors shall disclose to the owners:

(a) The current amount of regular assessments budgeted for contribution to the reserve account, the recommended contribution rate from the reserve study, and the funding plan upon which the recommended contribution rate is based;

(b) If additional regular or special assessments are scheduled to be imposed, the date the assessments are due, the amount of the assessments per each owner per month or year, and the purpose of the assessments;

(c) Based upon the most recent reserve study and other information, whether currently projected reserve account balances will be sufficient at the end of each year to meet the association's obligation for major maintenance, repair, or replacement of reserve components during the next thirty years;

(d) If reserve account balances are not projected to be sufficient, what additional assessments may be necessary to ensure that sufficient reserve account funds will be available each year during the next thirty years, the approximate dates assessments may be due, and the amount of the assessments per owner per month or year;

(e) The estimated amount recommended in the reserve account at the end of the current fiscal year based on the most recent reserve study, the projected reserve account cash balance at the end of the current fiscal year, and the percent funded at the date of the latest reserve study;

(f) The estimated amount recommended in the reserve account based upon the most recent reserve study at the end of each of the next five budget years, the projected reserve account cash balance in each of those years, and the projected percent funded for each of those years; and

(g) If the funding plan approved by the association is implemented, the projected reserve account cash balance in each of the next five budget years and the percent funded for each of those years.

(5) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause. [2011 c 189 § 8; 1995 c 283 § 5.]

Effective date—2011 c 189: See note following RCW 64.38.065.

64.38.065 Reserve account and study. (Effective January 1, 2012.) (1) An association is encouraged to establish a reserve account with a financial institution to fund major maintenance, repair, and replacement of common elements, including limited common elements that will require major maintenance, repair, or replacement within thirty years. If the association establishes a reserve account, the account must be in the name of the association. The board of directors is responsible for administering the reserve account.

(2) Unless doing so would impose an unreasonable hardship, an association with significant assets shall prepare and update a reserve study, in accordance with the association's governing documents and this chapter. The initial reserve study must be based upon a visual site inspection conducted by a reserve study professional.

(3) Unless doing so would impose an unreasonable hardship, the association shall update the reserve study annually. At least every three years, an updated reserve study must be prepared and based upon a visual site inspection conducted by a reserve study professional.

(4) The decisions relating to the preparation and updating of a reserve study must be made by the board of directors in the exercise of the reasonable discretion of the board. The decisions must include whether a reserve study will be prepared or updated, and whether the assistance of a reserve study professional will be utilized. [2011 c 189 § 9.]

Effective date—2011 c 189: "This act takes effect January 1, 2012." [2011 c 189 § 15.]

64.38.070 Reserve study—Requirements. (Effective January 1, 2012.) (1) A reserve study as described in RCW 64.38.065 is supplemental to the association's operating and maintenance budget. In preparing a reserve study, the association shall estimate the anticipated major maintenance,

repair, and replacement costs, whose infrequent and significant nature make them impractical to be included in an annual budget.

(2) A reserve study must include:

(a) A reserve component list, including any reserve component that would cost more than one percent of the annual budget of the association, not including the reserve account, for major maintenance, repair, or replacement. If one of these reserve components is not included in the reserve study, the study should provide commentary explaining the basis for its exclusion. The study must also include quantities and estimates for the useful life of each reserve component, remaining useful life of each reserve component, and current major maintenance, repair, or replacement cost for each reserve component;

(b) The date of the study, and a statement that the study meets the requirements of this section;

(c) The following level of reserve study performed:

(i) Level I: Full reserve study funding analysis and plan;

(ii) Level II: Update with visual site inspection; or

(iii) Level III: Update with no visual site inspection;

(d) The association's reserve account balance;

(e) The percentage of the fully funded balance that the reserve account is funded;

(f) Special assessments already implemented or planned;

(g) Interest and inflation assumptions;

(h) Current reserve account contribution rates for a full funding plan and baseline funding plan;

(i) A recommended reserve account contribution rate, a contribution rate for a full funding plan to achieve one hundred percent fully funded reserves by the end of the thirty-year study period, a baseline funding plan to maintain the reserve balance above zero throughout the thirty-year study period without special assessments, and a contribution rate recommended by the reserve study professional;

(j) A projected reserve account balance for thirty years and a funding plan to pay for projected costs from that reserve account balance without reliance on future unplanned special assessments; and

(k) A statement on whether the reserve study was prepared with the assistance of a reserve study professional.

(3) A reserve study must also include the following disclosure: "This reserve study should be reviewed carefully. It may not include all common and limited common element components that will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a reserve account for the cost of such maintenance, repair, or replacement. The failure to include a component in a reserve study, or to provide contributions to a reserve account for a component, may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a reserve component." [2011 c 189 § 10.]

Effective date—2011 c 189: See note following RCW 64.38.065.

64.38.075 Reserve account—Withdrawals. (Effective January 1, 2012.) An association may withdraw funds from its reserve account to pay for unforeseen or unbudgeted costs that are unrelated to maintenance, repair, or replacement of

the reserve components. The board of directors shall record any such withdrawal in the minute books of the association, cause notice of any such withdrawal to be hand delivered or sent prepaid by first-class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner, and adopt a repayment schedule not to exceed twenty-four months unless it determines that repayment within twenty-four months would impose an unreasonable burden on the owners. Payment for major maintenance, repair, or replacement of the reserve components out of cycle with the reserve study projections or not included in the reserve study may be made from the reserve account without meeting the notification or repayment requirements under this section. [2011 c 189 § 11.]

Effective date—2011 c 189: See note following RCW 64.38.065.

64.38.080 Reserve study—Demand for preparation and inclusion in budget. (Effective January 1, 2012.)

(1) When more than three years have passed since the date of the last reserve study prepared by a reserve study professional, the owners to which at least thirty-five percent of the votes are allocated may demand, in writing, to the association that the cost of a reserve study be included in the next budget and that the study be prepared by the end of that budget year. The written demand must refer to this section. The board of directors shall, upon receipt of the written demand, provide the owners who make the demand reasonable assurance that the board will include a reserve study in the next budget and, if the budget is not rejected by a majority of the owners, will arrange for the completion of a reserve study.

(2) If a written demand under this section is made and a reserve study is not timely prepared, a court may order specific performance and award reasonable attorneys' fees to the prevailing party in any legal action brought to enforce this section. An association may assert unreasonable hardship as an affirmative defense in any action brought against it under this section. Without limiting this affirmative defense, an unreasonable hardship exists where the cost of preparing a reserve study would exceed five percent of the association's annual budget.

(3) An owner's duty to pay for common expenses is not excused because of the association's failure to comply with this section or this chapter. A budget ratified by the owners is not invalidated because of the association's failure to comply with this section or this chapter. [2011 c 189 § 12.]

Effective date—2011 c 189: See note following RCW 64.38.065.

64.38.085 Reserve account and study—Liability. (Effective January 1, 2012.)

Monetary damages or any other liability may not be awarded against or imposed upon the association, the officers or board of directors of the association, or those persons who may have provided advice or assistance to the association or its officers or directors, for failure to: Establish a reserve account; have a current reserve study prepared or updated in accordance with the requirements of this chapter; or make the reserve disclosures in accordance with this chapter. [2011 c 189 § 13.]

Effective date—2011 c 189: See note following RCW 64.38.065.

64.38.090 Reserve study—Exemptions. (*Effective January 1, 2012.*) An association is not required to follow the reserve study requirements under RCW 64.38.025 and RCW 64.38.065 through 64.38.085 if the cost of the reserve study exceeds five percent of the association's annual budget, the association does not have significant assets, or there are ten or fewer homes in the association. [2011 c 189 § 14.]

Effective date—2011 c 189: See note following RCW 64.38.065.

Chapter 64.44 RCW CONTAMINATED PROPERTIES

Sections

64.44.050 Decontamination, demolition, or disposal by owner—Requirements and procedure—Costs—Decontamination timeline.

64.44.050 Decontamination, demolition, or disposal by owner—Requirements and procedure—Costs—Decontamination timeline. (1) An owner of contaminated property who desires to have the property decontaminated, demolished, or disposed of shall use the services of an authorized contractor unless otherwise authorized by the local health officer. The contractor and property owner shall prepare and submit a written work plan for decontamination, demolition, or disposal to the local health officer. The local health officer may charge a reasonable fee for review of the work plan. If the work plan is approved and the decontamination, demolition, or disposal is completed and the property is retested according to the plan and properly documented, then the health officer shall allow reuse of the property. A release for reuse document shall be recorded in the real property records indicating the property has been decontaminated, demolished, or disposed of in accordance with rules of the state department of health. The property owner is responsible for: (a) The costs of any property testing which may be required to demonstrate the presence or absence of hazardous chemicals; and (b) the costs of the property's decontamination, demolition, and disposal expenses, as well as costs incurred by the local health officer resulting from the enforcement of this chapter.

(2)(a) In a case where the contaminated property is a motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW 88.02.310, and the local health officer has issued an order declaring the property unfit and prohibiting its use, the city or county in which the property is located shall take action to prohibit use, occupancy, or removal, and shall require demolition, disposal, or decontamination of the property. The city, county, or local law enforcement agency may impound the vehicle or vessel to enforce this chapter.

(b) The property owner shall have the property demolished, disposed of, or decontaminated by an authorized contractor, or under a written work plan approved by the local health officer, within thirty days of receiving the order declaring the property unfit and prohibited from use. After all procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted, if the property owner has not demolished, disposed of, or decontaminated the property using an authorized contractor, or under a written work plan approved by the local health officer within thirty days, then the local health officer or the local

law enforcement agency may demolish, dispose of, or decontaminate the property. The property owner is responsible for the costs of the property's demolition, disposal, or decontamination, as well as all costs incurred by the local health officer or the local law enforcement agency resulting from the enforcement of this chapter, except as otherwise provided under this subsection.

(c) The legal owner of a motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW 88.02.310 whose sole basis of ownership is a bona fide security interest is responsible for costs under this subsection if the legal owner had knowledge of or consented to any act or omission that caused contamination of the vehicle or vessel.

(d) If the vehicle or vessel has been stolen and the property owner neither had knowledge of nor consented to any act or omission that contributed to the theft and subsequent contamination of the vehicle or vessel, the owner is not responsible for costs under this subsection. However, if the registered owner is insured, the registered owner shall, within fifteen calendar days of receiving an order declaring the property unfit and prohibiting its use, submit a claim to his or her insurer for reimbursement of costs of the property's demolition, disposal, or decontamination, as well as all costs incurred by the local health officer or the local law enforcement agency resulting from the enforcement of this chapter, and shall provide proof of claim to the local health officer or the local law enforcement agency.

(e) If the property owner has not acted to demolish, dispose of, or decontaminate as set forth in this subsection regardless of responsibility for costs, and the local health officer or local law enforcement agency has taken responsibility for demolition, disposal, or decontamination, including all associated costs, then all rights, title, and interest in the property shall be deemed forfeited to the local health jurisdiction or the local law enforcement agency.

(f) This subsection may not be construed to limit the authority of a city, county, local law enforcement agency, or local health officer to take action under this chapter to require the owner of the real property upon which the contaminated vehicle or vessel is located to comply with the requirements of this chapter, including provisions for the right of notice and opportunity to appeal as provided in RCW 64.44.030.

(3) Except as provided in subsection (2) of this section, the local health officer has thirty days from the issuance of an order declaring a property unfit and prohibiting its use to establish a reasonable timeline for decontamination. The department of health shall establish the factors to be considered by the local health officer in establishing the appropriate amount of time.

The local health officer shall notify the property owner of the proposed time frame by United States mail to the last known address. Notice shall be postmarked no later than the thirtieth day from the issuance of the order. The property owner may request a modification of the time frame by submitting a letter identifying the circumstances which justify such an extension to the local health officer within thirty-five days of the date of the postmark on the notification regardless of when received. [2011 c 171 § 106; 2008 c 201 § 1; 2006 c 339 § 205; 1999 c 292 § 6; 1990 c 213 § 6.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

Chapter 64.60 RCW

PRIVATE TRANSFER FEE OBLIGATION ACT

Sections

64.60.005	Findings.
64.60.010	Definitions.
64.60.020	Private transfer fee obligations—Enforceability—Interpretation.
64.60.030	Liability.
64.60.040	Notice of private transfer fee obligation.
64.60.900	Short title.
64.60.901	Effective date—2011 c 36.

64.60.005 Findings. The legislature finds and declares that the public policy of this state favors the marketability of real property and the transferability of interests in real property free of title defects or unreasonable restraints on alienation. The legislature further finds and declares that private transfer fee obligations violate this public policy by impairing the marketability and transferability of real property and by constituting an unreasonable restraint on alienation regardless of the duration of the obligation to pay a private transfer fee, the amount of a private transfer fee, or the method by which any private transfer fee is created or imposed. Thus, the legislature finds and declares that a private transfer fee obligation may not run with the title to real property, touch or concern the real property, or otherwise bind subsequent owners of real property under any common law or equitable principle. [2011 c 36 § 1.]

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

(1) "Association" means: An association of apartment owners as defined in RCW 64.32.010; a unit owners' association as defined in RCW 64.34.020; a homeowners' association as defined in RCW 64.38.010; a corporation organized pursuant to chapter 24.06 RCW for the purpose of owning real estate under a cooperative ownership plan; or a nonprofit or cooperative membership organization composed exclusively of owners of mobile homes, manufactured housing, timeshares, camping resort interests, or other interests in real property that is responsible for the maintenance, improvements, services, or expenses related to real property that is owned, used, or enjoyed in common by the members.

(2) "Payee" means the person or entity who claims the right to receive or collect a private transfer fee payable under a private transfer fee obligation. A payee may or may not have a pecuniary interest in the private transfer fee obligation.

(3) "Private transfer fee" means a fee or charge payable upon the transfer of an interest in real property, or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the real property, the purchase price, or other consideration given for the transfer. The fol-

lowing are not private transfer fees for the purposes of this section:

(a) Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the real property payable by the grantee based upon any subsequent appreciation, development, or sale of the real property, if such additional consideration is payable on a one-time basis only and the obligation to make such payment does not bind successors in title to the real property;

(b) Any commission payable to a licensed real estate broker for services rendered in connection with the transfer of real property pursuant to an agreement between the broker and the grantor or the grantee including, but not limited to, any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of the property;

(c) Any interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage against real property including, but not limited to, any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest, profit participation, or other consideration, and payable to the lender in connection with the loan;

(d) Any rent, reimbursement, charge, fee, or other amount payable by a lessee or licensee to a lessor or licensor under a lease or license including, but not limited to, any fee payable to the lessor or licensor for consenting to an assignment, subletting, encumbrance, or transfer of the lease or license;

(e) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the real property to another person;

(f) Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority;

(g) Any assessment, fee, charge, fine, dues, or other amount payable to an association pursuant to chapter 64.32, 64.34, or 64.38 RCW, payable by a purchaser of a camping resort contract, as defined in RCW 19.105.300, or a timeshare, as defined in RCW 64.36.010, or payable pursuant to a recorded servitude encumbering the real property being transferred, as long as no portion of the fee is required to be passed through or paid to a third party;

(h) Any fee payable, upon a transfer, to an organization qualified under section 501(c)(3) or 501(c)(4) of the internal revenue code of 1986, if the sole purpose of such organization is to support cultural, educational, charitable, recreational, conservation, or similar activities benefiting the real property being transferred and the fee is used exclusively to fund such activities;

(i) Any fee, charge, assessment, dues, fine, contribution, or other amount pertaining solely to the purchase or transfer of a club membership relating to real property owned by the member including, but not limited to, any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property;

(j) Any fee charged by an association or an agent of an association to a transferor or transferee for a service rendered contemporaneously with the imposition of the fee, provided that the fee is not to be passed through to a third party other than an agent of the association.

(4) "Private transfer fee obligation" means an obligation arising under a declaration or covenant recorded against the title to real property, or under any other contractual agreement or promise, recorded or not, that requires or purports to require the payment of a private transfer fee upon a subsequent transfer of an interest in the real property.

(5) "Transfer" means the sale, gift, grant, conveyance, lease, license, assignment, inheritance, or other act resulting in a transfer of ownership interest in real property located in this state. [2011 c 36 § 3.]

64.60.020 Private transfer fee obligations—Enforceability—Interpretation. (1) A private transfer fee obligation recorded or entered into in this state on or after April 13, 2011, does not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee or holder of any interest in real property as an equitable servitude or otherwise. Any private transfer fee obligation that is recorded or entered into in this state on or after April 13, 2011, is void and unenforceable.

(2) A private transfer fee obligation recorded or entered into in this state before April 13, 2011, is not presumed valid and enforceable. Any such private transfer fee obligation must be interpreted and enforced according to principles of applicable real estate, servitude contract, and other law including, without limitation, restraints on alienation, the rule against perpetuities, the touch and concern doctrine, and the requirement for covenants to run with the land, as well as fraud, misrepresentation, violation of public policy, or another invalidating cause. [2011 c 36 § 4.]

64.60.030 Liability. Any person who records, or enters into, an agreement imposing a private transfer fee obligation in the person's favor after April 13, 2011, is liable for (1) any damages resulting from the imposition of the private transfer fee obligation on the transfer of an interest in the real property including, but not limited to, the amount of any private transfer fee paid by a party to the transfer, and (2) reasonable attorneys' fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real property to recover any private transfer fee paid or in connection with an action to quiet title. If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability must be assessed to the principal, rather than the agent. [2011 c 36 § 5.]

64.60.040 Notice of private transfer fee obligation. (1) A payee of a private transfer fee obligation imposed before April 13, 2011, shall record, before December 31, 2011, against the real property subject to the private transfer fee obligation, a separate document in the county auditor's office in the county in which the real property is located that includes all of the following requirements:

(a) The title, "Notice of Private Transfer Fee Obligation";

(b) The amount if the private transfer fee is a flat amount, the percentage of the sales price constituting the cost of the private transfer fee, or another basis by which the private transfer fee is to be calculated;

(c) The date under which the private transfer fee obligation expires, if any;

(d) The name and address of the payee;

(e) The acknowledged signature of the payee or a representative of the payee; and

(f) The legal description of the real property purportedly burdened by the private transfer fee obligation.

(2) A payee may file an amendment to the notice of private transfer fee obligation containing new contact information. The amendment must contain the recording information of the notice of private transfer fee obligation which it amends and the legal description of the real property burdened by the private transfer fee obligation.

(3) If a payee fails to file the notice required under subsection (1) of this section before December 31, 2011, the private transfer fee obligation is not enforceable by the payee. [2011 c 36 § 6.]

64.60.900 Short title. This chapter may be known and cited as the private transfer fee obligation act. [2011 c 36 § 2.]

64.60.901 Effective date—2011 c 36. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 13, 2011]. [2011 c 36 § 7.]

Title 66

ALCOHOLIC BEVERAGE CONTROL

Chapters

66.04 Definitions.

66.08 Liquor control board—General provisions.

66.16 State liquor stores.

66.20 Liquor permits.

66.24 Licenses—Stamp taxes.

66.28 Miscellaneous regulatory provisions.

66.44 Enforcement—Penalties.

66.70 Liquor warehousing and distribution.

Chapter 66.04 RCW

DEFINITIONS

Sections

66.04.010 Definitions.

66.04.010 Definitions. In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not

include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer or wine for transportation into and resale in the state of Washington; and which beer or wine is produced by a brewery or winery in the United States outside of the state of Washington; and

(d) Is appointed by the brewery or winery referenced in (c) of this subsection as its authorized representative for marketing and selling its products within the United States in accordance with a written agreement between the authorized representative and such brewery or winery pursuant to this title.

(3) "Beer" means any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.

(4) "Beer distributor" means a person who buys beer from a domestic brewery, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(5) "Beer importer" means a person or business within Washington who purchases beer from a beer certificate of approval holder or who acquires foreign produced beer from a source outside of the United States for the purpose of selling the same pursuant to this title.

(6) "Board" means the liquor control board, constituted under this title.

(7) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(9) "Confection" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, dairy products, or flavorings, in the form of bars, drops, or pieces.

(10) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(11) "Contract liquor store" means a business that sells liquor on behalf of the board through a contract with a contract liquor store manager.

(12) "Craft distillery" means a distillery that pays the reduced licensing fee under RCW 66.24.140.

(13) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(14) "Distiller" means a person engaged in the business of distilling spirits.

(15) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

(16) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(17) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(18) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(19) "Employee" means any person employed by the board.

(20) "Flavored malt beverage" means:

(a) A malt beverage containing six percent or less alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than forty-nine percent of the beverage's overall alcohol content; or

(b) A malt beverage containing more than six percent alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than one and one-half percent of the beverage's overall alcohol content.

(21) "Fund" means 'liquor revolving fund.'

(22) "Hotel" means buildings, structures, and grounds, having facilities for preparing, cooking, and serving food, that are kept, used, maintained, advertised, or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests. The buildings, structures, and grounds must be located on adjacent property either owned or leased by the same person or persons.

(23) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

(24) "Imprisonment" means confinement in the county jail.

(25) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(26) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(27) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(28) "Nightclub" means an establishment that provides entertainment and has as its primary source of revenue (a) the sale of alcohol for consumption on the premises, (b) cover charges, or (c) both.

(29) "Package" means any container or receptacle used for holding liquor.

(30) "Passenger vessel" means any boat, ship, vessel, barge, or other floating craft of any kind carrying passengers for compensation.

(31) "Permit" means a permit for the purchase of liquor under this title.

(32) "Person" means an individual, copartnership, association, or corporation.

(33) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(34) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(35) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(36) "Regulations" means regulations made by the board under the powers conferred by this title.

(37) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(38) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale"

and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the non-profit organization conducting the raffle has obtained the appropriate permit from the board.

(39) "Service bar" means a fixed or portable table, counter, cart, or similar work station primarily used to prepare, mix, serve, and sell alcohol that is picked up by employees or customers. Customers may not be seated or allowed to consume food or alcohol at a service bar.

(40) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(41) "Spirits" means any beverage which contains alcohol obtained by distillation, except flavored malt beverages, but including wines exceeding twenty-four percent of alcohol by volume.

(42) "Store" means a state liquor store established under this title.

(43) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(44) "VIP airport lounge" means an establishment within an international airport located beyond security checkpoints that provides a special space to sit, relax, read, work, and enjoy beverages where access is controlled by the VIP airport lounge operator and is generally limited to the following classifications of persons:

(a) Airline passengers of any age whose admission is based on a first-class, executive, or business class ticket;

(b) Airline passengers of any age who are qualified members or allowed guests of certain frequent flyer or other loyalty incentive programs maintained by airlines that have agreements describing the conditions for access to the VIP airport lounge;

(c) Airline passengers of any age who are qualified members or allowed guests of certain enhanced amenities programs maintained by companies that have agreements describing the conditions for access to the VIP airport lounge;

(d) Airport and airline employees, government officials, foreign dignitaries, and other attendees of functions held by the airport authority or airlines related to the promotion of business objectives such as increasing international air traffic and enhancing foreign trade where access to the VIP airport lounge will be controlled by the VIP airport lounge operator; and

(e) Airline passengers of any age or airline employees whose admission is based on a pass issued or permission given by the airline for access to the VIP airport lounge.

(45) "VIP airport lounge operator" means an airline, port district, or other entity operating a VIP airport lounge that: Is accountable for compliance with the alcohol beverage control act under Title 66 RCW; holds the license under chapter 66.24 RCW issued to the VIP airport lounge; and provides a point of contact for addressing any licensing and enforcement by the board.

(46)(a) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or

other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (i) Wines that are both sealed or capped by cork closure and aged two years or more; and (ii) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

(b) This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(47) "Wine distributor" means a person who buys wine from a domestic winery, wine certificate of approval holder, or wine importer, or who acquires foreign produced wine from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

(48) "Wine importer" means a person or business within Washington who purchases wine from a wine certificate of approval holder or who acquires foreign produced wine from a source outside of the United States for the purpose of selling the same pursuant to this title.

(49) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery. [2011 c 325 § 2; 2011 c 195 § 3. Prior: 2009 c 373 § 1; 2009 c 271 § 2; 2008 c 94 § 4; (2008 c 94 § 3 expired July 1, 2008); prior: 2007 c 370 § 10; 2007 c 226 § 1; prior: 2006 c 225 § 1; 2006 c 101 § 1; 2005 c 151 § 1; 2004 c 160 § 1; 2000 c 142 § 1; 1997 c 321 § 37; 1991 c 192 § 1; 1987 c 386 § 3; 1984 c 78 § 5; 1982 c 39 § 1; 1981 1st ex.s. c 5 § 1; 1980 c 140 § 3; 1969 ex.s. c 21 § 13; 1935 c 158 § 1; 1933 ex.s. c 62 § 3; RRS § 7306-3. Formerly RCW 66.04.010 through 66.04.380.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2011 c 195 § 3 and by 2011 c 325 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2008 c 94 §§ 4 and 11: "Sections 4 and 11 of this act take effect July 1, 2008." [2008 c 94 § 13.]

Expiration date—2008 c 94 § 3: "Section 3 of this act expires July 1, 2008." [2008 c 94 § 12.]

Effective date—2007 c 370 §§ 10-20: "Sections 10 through 20 of this act take effect July 1, 2008." [2007 c 370 § 23.]

Effective date—2004 c 160: "This act takes effect January 1, 2005." [2004 c 160 § 20.]

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

Additional notes found at www.leg.wa.gov

Chapter 66.08 RCW LIQUOR CONTROL BOARD— GENERAL PROVISIONS

Sections

66.08.050	Powers of board in general. (<i>Effective until December 1, 2012.</i>)
66.08.050	Powers of board in general. (<i>Effective December 1, 2012.</i>)
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66.08.170	Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable.
66.08.180	Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies.
66.08.190	Liquor revolving fund—Disbursement of excess funds to state, counties, and cities—Withholding of funds for non-compliance.
66.08.220	Liquor revolving fund—Separate account—Distribution.
66.08.235	Liquor control board construction and maintenance account (<i>as amended by 2011 c 5</i>).
66.08.235	Liquor control board construction and maintenance account (<i>as amended by 2011 1st sp.s. c 50</i>).

66.08.050 Powers of board in general. (*Effective until December 1, 2012.*) The board, subject to the provisions of this title and the rules, shall:

(1) Determine the localities within which state liquor stores shall be established throughout the state, and the number and situation of the stores within each locality;

(2) Appoint in cities and towns and other communities, in which no state liquor store is located, contract liquor stores. In addition, the board may appoint, in its discretion, a manufacturer that also manufactures liquor products other than wine under a license under this title, as a contract liquor store for the purpose of sale of liquor products of its own manufacture on the licensed premises only. Such contract liquor stores shall be authorized to sell liquor under the guidelines provided by law, rule, or contract, and such contract liquor stores shall be subject to such additional rules and regulations consistent with this title as the board may require. Sampling on contract store premises is permitted under chapter 186, Laws of 2011;

(3) If a contract under RCW 66.70.040 is not then in effect, establish all necessary warehouses for the storing and bottling, diluting and rectifying of stocks of liquors for the purposes of this title;

(4) Provide for the leasing for periods not to exceed ten years of all premises required for the conduct of the business (other than premises subject to a lease or other contract under RCW 66.70.040); and for remodeling the same, and the procuring of their furnishings, fixtures, and supplies; and for obtaining options of renewal of such leases by the lessee. The terms of such leases in all other respects is subject to the direction of the board;

(5) Determine the nature, form and capacity of all packages to be used for containing liquor kept for sale under this title;

(6) Execute or cause to be executed, all contracts, papers, and documents in the name of the board, under such regulations as the board may fix;

(7) Pay all customs, duties, excises, charges and obligations whatsoever relating to the business of the board (other than obligations assumed by the lessee through a contract under RCW 66.70.040);

(8) Require bonds from all employees in the discretion of the board, and to determine the amount of fidelity bond of each such employee;

(9) Perform services for the state lottery commission to such extent, and for such compensation, as may be mutually agreed upon between the board and the commission;

(10) Accept and deposit into the general fund-local account and disburse, subject to appropriation, federal grants or other funds or donations from any source for the purpose of improving public awareness of the health risks associated with alcohol consumption by youth and the abuse of alcohol by adults in Washington state. The board's alcohol awareness program shall cooperate with federal and state agencies, interested organizations, and individuals to effect an active public beverage alcohol awareness program;

(11) Perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and shall have full power to do each and every act necessary to the conduct of its business, including all buying, selling, preparation and approval of forms, and every other function of the business whatsoever, subject only to audit by the state auditor. However, the board has no authority to regulate the content of spoken language on licensed premises where wine and other liquors are served and where there is not a clear and present danger of disorderly conduct being provoked by such language. [2011 1st sp.s. c 45 § 7; 2011 c 186 § 2; 2005 c 151 § 3; 1997 c 228 § 1; 1993 c 25 § 1; 1986 c 214 § 2; 1983 c 160 § 1; 1975 1st ex.s. c 173 § 1; 1969 ex.s. c 178 § 1; 1963 c 239 § 3; 1935 c 174 § 10; 1933 ex.s. c 62 § 69; RRS § 7306-69.]

Reviser's note: This section was amended by 2011 c 186 § 2 and by 2011 1st sp.s. c 45 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 45: See note following RCW 66.70.030.

Spirit sampling—Liquor store pilot project—2011 c 186: "(1) The liquor control board shall establish a pilot project to allow spirits sampling in state liquor stores as defined in RCW 66.16.010 and contract stores as defined in RCW 66.04.010(11) for the purpose of promoting the sponsor's products. For purposes of this section, "sponsors" means: A domestic distiller licensed under RCW 66.24.140 or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310.

(a) The pilot project shall consist of thirty locations with at least six samplings to be conducted at each location between September 1, 2011, and September 1, 2012. However, no state liquor store or contract store may hold more than one spirits sampling per week during the project period.

(b) The pilot project locations shall be determined by the board. Before the board determines which state liquor stores or contract stores will be eligible to participate in the sampling pilot, it shall give:

(i) Due consideration to the location of the state liquor store or contract store with respect to the proximity of places of worship, schools, and public institutions;

(ii) Due consideration to motor vehicle accident data in the proximity of the state liquor store or contract store; and

(iii) Written notice by certified mail of the proposed spirits sampling to places of worship, schools, and public institutions within five hundred feet of the liquor store proposed to offer spirits sampling.

(c) Sampling must be conducted under the following conditions:

(i) Sampling may take place only in an area of a state liquor store or contract store in which access to persons under twenty-one years of age is prohibited;

(ii) Samples may be provided free of charge;

(iii) Only persons twenty-one years of age or over may sample spirits;

(iv) Each sample must be one-quarter ounce or less, with no more than one ounce of samples provided per person per day;

(v) Only sponsors may serve samples;

(vi) Any person involved in the serving of such samples must have completed a mandatory alcohol server training program;

(vii) No person who is apparently intoxicated may sample spirits;

(viii) The product provided for sampling must be available for sale at the state liquor store or contract store where the sampling occurs at the time of the sampling; and

(ix) Customers must remain on the state liquor store or contract store premise while consuming samples.

(d) The liquor control board may prohibit sampling at a pilot project location that is within the boundaries of an alcohol impact area recognized by resolution of the board if the board finds that the sampling activities at the location are having an adverse effect on the reduction of chronic public inebriation in the area.

(e) All other criteria needed to establish and monitor the pilot project shall be determined by the board.

(f) The board shall report on the pilot project to the appropriate committees of the legislature by December 1, 2012. The board's report shall include the results of a survey of liquor store managers and contract liquor store managers.

(2) The liquor control board may adopt rules to implement this section." [2011 c 186 § 1.]

Expiration date—2011 c 186: "This act expires December 1, 2012." [2011 c 186 § 5.]

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

Additional notes found at www.leg.wa.gov

66.08.050 Powers of board in general. (Effective December 1, 2012.) The board, subject to the provisions of this title and the rules, shall:

(1) Determine the localities within which state liquor stores shall be established throughout the state, and the number and situation of the stores within each locality;

(2) Appoint in cities and towns and other communities, in which no state liquor store is located, contract liquor stores. In addition, the board may appoint, in its discretion, a manufacturer that also manufactures liquor products other than wine under a license under this title, as a contract liquor store for the purpose of sale of liquor products of its own manufacture on the licensed premises only. Such contract liquor stores shall be authorized to sell liquor under the guidelines provided by law, rule, or contract, and such contract liquor stores shall be subject to such additional rules and regulations consistent with this title as the board may require;

(3) If a contract under RCW 66.70.040 is not then in effect, establish all necessary warehouses for the storing and bottling, diluting and rectifying of stocks of liquors for the purposes of this title;

(4) Provide for the leasing for periods not to exceed ten years of all premises required for the conduct of the business (other than premises subject to a lease or other contract under RCW 66.70.040); and for remodeling the same, and the procuring of their furnishings, fixtures, and supplies; and for obtaining options of renewal of such leases by the lessee. The terms of such leases in all other respects is subject to the direction of the board;

(5) Determine the nature, form and capacity of all packages to be used for containing liquor kept for sale under this title;

(6) Execute or cause to be executed, all contracts, papers, and documents in the name of the board, under such regulations as the board may fix;

(7) Pay all customs, duties, excises, charges and obligations whatsoever relating to the business of the board (other

than obligations assumed by the lessee through a contract under RCW 66.70.040);

(8) Require bonds from all employees in the discretion of the board, and to determine the amount of fidelity bond of each such employee;

(9) Perform services for the state lottery commission to such extent, and for such compensation, as may be mutually agreed upon between the board and the commission;

(10) Accept and deposit into the general fund-local account and disburse, subject to appropriation, federal grants or other funds or donations from any source for the purpose of improving public awareness of the health risks associated with alcohol consumption by youth and the abuse of alcohol by adults in Washington state. The board's alcohol awareness program shall cooperate with federal and state agencies, interested organizations, and individuals to effect an active public beverage alcohol awareness program;

(11) Perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and shall have full power to do each and every act necessary to the conduct of its business, including all buying, selling, preparation and approval of forms, and every other function of the business whatsoever, subject only to audit by the state auditor. However, the board has no authority to regulate the content of spoken language on licensed premises where wine and other liquors are served and where there is not a clear and present danger of disorderly conduct being provoked by such language. [2011 1st sp.s. c 45 § 7; 2005 c 151 § 3; 1997 c 228 § 1; 1993 c 25 § 1; 1986 c 214 § 2; 1983 c 160 § 1; 1975 1st ex.s. c 173 § 1; 1969 ex.s. c 178 § 1; 1963 c 239 § 3; 1935 c 174 § 10; 1933 ex.s. c 62 § 69; RRS § 7306-69.]

Effective date—2011 1st sp.s. c 45: See note following RCW 66.70.030.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

Additional notes found at www.leg.wa.gov

66.08.070 Purchase of liquor by board—Consignment not prohibited—Warranty or affirmation not required for wine or malt purchases.

(1) Every order for the purchase of liquor must be authorized by the board, and no order for liquor is valid or binding unless it is so authorized and signed by the board or its authorized designee.

(2) A duplicate of every such order must be kept on file in the office of the board.

(3) All cancellations of such orders made by the board must be signed in the same manner and duplicates thereof kept on file in the office of the board. Nothing in this title may be construed as preventing the board from accepting liquor on consignment.

(4) In the purchase of wine or malt beverages the board may not require, as a term or condition of purchase, any warranty or affirmation with respect to the relationship of the price charged the board to any price charged any other buyer.

(5) This section does not apply to a contract entered into under RCW 66.70.040. [2011 1st sp.s. c 45 § 8; 1985 c 226 § 2; 1973 1st ex.s. c 209 § 1; 1933 ex.s. c 62 § 67; RRS § 7306-67.]

Effective date—2011 1st sp.s. c 45: See note following RCW 66.70.030.

Additional notes found at www.leg.wa.gov

66.08.170 Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable.

There shall be a fund, known as the "liquor revolving fund", which shall consist of all license fees, permit fees, penalties, forfeitures, and all other moneys, income, or revenue received by the board. The state treasurer shall be custodian of the fund. All moneys received by the board or any employee thereof, except for change funds and an amount of petty cash as fixed by the board within the authority of law shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the liquor revolving fund. During the 2009-2011 fiscal biennium, the legislature may transfer funds from the liquor revolving account [fund] to the state general fund and may direct an additional amount of liquor profits to be distributed to local governments. Neither the transfer of funds nor the additional distribution of liquor profits to local governments during the 2009-2011 fiscal biennium may reduce the excess fund distributions that otherwise would occur under RCW 66.08.190. During the 2011-2013 fiscal biennium, the state treasurer shall transfer from the liquor revolving fund to the state general fund forty-two million five hundred thousand dollars for fiscal year 2012 and forty-two million five hundred thousand dollars for fiscal year 2013. The transfer during the 2011-2013 fiscal biennium may not reduce the excess fund distributions that otherwise would occur under RCW 66.08.190. Sales to licensees are exempt from any liquor price increases that may result from the transfer of funds from the liquor revolving fund to the state general fund during the 2011-2013 fiscal biennium. Disbursements from the revolving fund shall be on authorization of the board or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control the liquor revolving fund shall be subject in all respects to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from such fund. [2011 1st sp.s. c 50 § 959; 2009 c 564 § 947; 2002 c 371 § 917; 1961 ex.s. c 6 § 1; 1933 ex.s. c 62 § 73; RRS § 7306-73. Formerly RCW 43.66.060.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Transfer of liquor revolving fund to state treasurer—Outstanding obligations: "On June 30, 1961, the Washington state liquor control board shall deliver and transfer to the state treasurer, as custodian, all moneys and accounts which comprise the liquor revolving fund, except change funds and petty cash, and the state treasurer shall assume custody thereof. All obligations outstanding as of June 30, 1961 shall be paid out of the liquor revolving fund." [1961 ex.s. c 6 § 5.]

Additional notes found at www.leg.wa.gov

66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies.

Except as provided in RCW 66.24.290(1), moneys in the liquor revolving fund shall be distributed by the board at least once every three months in accordance with RCW 66.08.190, 66.08.200 and 66.08.210.

However, the board shall reserve from distribution such amount not exceeding five hundred thousand dollars as may be necessary for the proper administration of this title.

(1) All license fees, penalties, and forfeitures derived under chapter 13, Laws of 1935 from spirits, beer, and wine restaurant; spirits, beer, and wine private club; hotel; spirits, beer, and wine nightclub; spirits, beer, and wine VIP airport lounge; and sports entertainment facility licenses shall every three months be disbursed by the board as follows:

(a) Three hundred thousand dollars per biennium, to the death investigations account for the state toxicology program pursuant to RCW 68.50.107; and

(b) Of the remaining funds:

(i) 6.06 percent to the University of Washington and 4.04 percent to Washington State University for alcoholism and drug abuse research and for the dissemination of such research; and

(ii) 89.9 percent to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050;

(2) The first fifty-five dollars per license fee provided in RCW 66.24.320 and 66.24.330 up to a maximum of one hundred fifty thousand dollars annually shall be disbursed every three months by the board to the general fund to be used for juvenile alcohol and drug prevention programs for kindergarten through third grade to be administered by the superintendent of public instruction;

(3) Twenty percent of the remaining total amount derived from license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.350, and 66.24.360, shall be transferred to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050; and

(4) One-fourth cent per liter of the tax imposed by RCW 66.24.210 shall every three months be disbursed by the board to Washington State University solely for wine and wine grape research, extension programs related to wine and wine grape research, and resident instruction in both wine grape production and the processing aspects of the wine industry in accordance with RCW 28B.30.068. The director of financial management shall prescribe suitable accounting procedures to ensure that the funds transferred to the general fund to be used by the department of social and health services and appropriated are separately accounted for. [2011 c 325 § 7; 2009 c 271 § 3; 2007 c 370 § 14; 2000 c 192 § 1. Prior: 1999 c 281 § 1; 1999 c 40 § 7; prior: 1997 c 451 § 3; 1997 c 321 § 57; 1995 c 398 § 16; 1987 c 458 § 10; 1986 c 87 § 1; 1981 1st ex.s. c 5 § 6; 1979 c 151 § 166; 1967 ex.s. c 75 § 1; 1965 ex.s. c 143 § 2; 1949 c 5 § 10; 1935 c 13 § 2; 1933 ex.s. c 62 § 77; Rem. Supp. 1949 § 7306-77. Formerly RCW 43.66.080.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Distribution for state toxicological lab: RCW 68.50.107.

Wine grape industry, instruction relating to—Purpose—Administration: RCW 28B.30.067 and 28B.30.068.

Additional notes found at www.leg.wa.gov

66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties, and cities—Withholding of funds for noncompliance. (1) Except for revenues generated by the 2003 surcharge of \$0.42/liter on retail sales of

spirits that must be distributed to the state general fund during the 2003-2005 biennium, when excess funds are distributed, all moneys subject to distribution must be disbursed as follows:

(a) Three-tenths of one percent to border areas under RCW 66.08.195; and

(b) Except as provided in subsection (4) of this section, from the amount remaining after distribution under (a) of this subsection, (i) fifty percent to the general fund of the state, (ii) ten percent to the counties of the state, and (iii) forty percent to the incorporated cities and towns of the state.

(2) During the months of June, September, December, and March of each year, prior to disbursing the distribution to incorporated cities and towns under subsection (1)(b) of this section, the treasurer must deduct from that distribution an amount that will fund that quarter's allotments under RCW 43.88.110 from any legislative appropriation from the city and town research services account. The treasurer must deposit the amount deducted into the city and town research services account.

(3) The governor may notify and direct the state treasurer to withhold the revenues to which the counties and cities are entitled under this section if the counties or cities are found to be in noncompliance pursuant to RCW 36.70A.340.

(4) During the 2011-2013 fiscal biennium, from the amount remaining after distribution under subsection (1)(a) of this section, (a) 51.7 percent to the general fund of the state, (b) 9.7 percent to the counties of the state, and (c) 38.6 percent to the incorporated cities and towns of the state. [2011 1st sp.s. c 50 § 960; 2003 1st sp.s. c 25 § 927; 2002 c 38 § 2; 2000 c 227 § 2; 1995 c 159 § 1; 1991 sp.s. c 32 § 34; 1988 c 229 § 4; 1957 c 175 § 6. Prior: 1955 c 109 § 2; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.090.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Finding—1988 c 229: "The legislature finds and declares that certain counties and municipalities near international borders are subjected to a constant volume and flow of travelers and visitors for whom local government services must be provided. The legislature further finds that it is in the public interest and for the protection of the health, property, and welfare of the residents and visitors to provide supplemental resources to augment and maintain existing levels of police protection in such areas and to alleviate the impact of such added burdens." [1988 c 229 § 2.]

Additional notes found at www.leg.wa.gov

66.08.220 Liquor revolving fund—Separate account—Distribution. The board shall set aside in a separate account in the liquor revolving fund an amount equal to ten percent of its gross sales of liquor to spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; hotel; spirits, beer, and wine VIP airport lounge; and sports entertainment facility licensees collected from these licensees pursuant to the provisions of RCW 82.08.150, less the fifteen percent discount provided for in RCW 66.24.440; and the moneys in said separate account shall be distributed in accordance with the provisions of RCW 66.08.190, 66.08.200 and 66.08.210. No election unit in which the sale of liquor under spirits, beer, and wine

restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses is unlawful shall be entitled to share in the distribution of moneys from such separate account. [2011 c 325 § 8; 2009 c 271 § 4; 2007 c 370 § 15; 1999 c 281 § 2; 1949 c 5 § 11 (adding new section 78-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-78A. Formerly RCW 43.66.130.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Additional notes found at www.leg.wa.gov

66.08.235 Liquor control board construction and maintenance account (as amended by 2011 c 5). The liquor control board construction and maintenance account is created within the state treasury. The liquor control board shall deposit into this account a portion of the board's markup, as authorized by chapter 66.16 RCW, placed upon liquor as determined by the board. Moneys in the account may be spent only after appropriation. The liquor control board shall use deposits to this account to fund construction and maintenance of a centralized distribution center for liquor products intended for sale through the board's liquor store and contract liquor store system. During the ~~((2001-2003))~~ 2009-2011 fiscal biennium, the legislature may transfer from the liquor control board construction and maintenance account to the state general fund such amounts as reflect the ~~((appropriations reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings))~~ excess fund balance in the account. [2011 c 5 § 918; 2005 c 151 § 4; 2002 c 371 § 918; 1997 c 75 § 1.]

Effective date—2011 c 5: See note following RCW 43.79.487.

66.08.235 Liquor control board construction and maintenance account (as amended by 2011 1st sp.s. c 50). The liquor control board construction and maintenance account is created within the state treasury. The liquor control board shall deposit into this account a portion of the board's markup, as authorized by chapter 66.16 RCW, placed upon liquor as determined by the board. Moneys in the account may be spent only after appropriation. The liquor control board shall use deposits to this account to fund construction and maintenance of a centralized distribution center for liquor products intended for sale through the board's liquor store and contract liquor store system. During the ~~((2001-2003))~~ 2011-2013 fiscal biennium, the legislature may transfer from the liquor control board construction and maintenance account to the state general fund such amounts as reflect the ~~((appropriations reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings))~~ excess fund balance of the account. [2011 1st sp.s. c 50 § 961; 2005 c 151 § 4; 2002 c 371 § 918; 1997 c 75 § 1.]

Reviser's note: RCW 66.08.235 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025(1).

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Additional notes found at www.leg.wa.gov

Chapter 66.16 RCW STATE LIQUOR STORES

Sections

- 66.16.041 Credit and debit card purchases—Rules—Provision, installation, maintenance of equipment by board—Consideration of offsetting liquor revolving fund balance reduction—Compliance with electronic benefit card provisions.
- 66.16.070 Liquor cannot be opened or consumed on store premises. *(Effective until December 1, 2012.)*

66.16.041 Credit and debit card purchases—Rules—Provision, installation, maintenance of equipment by board—Consideration of offsetting liquor revolving fund

balance reduction—Compliance with electronic benefit card provisions. (1) The state liquor control board shall accept bank credit card and debit cards for purchases in state liquor stores, under such rules as the board may adopt. The board shall authorize contract liquor stores appointed under RCW 66.08.050 to accept bank credit cards and debit cards for liquor purchases under this title, under such rules as the board may adopt.

(2) If a contract liquor store chooses to use credit or debit cards for liquor purchases, the board shall provide equipment and installation and maintenance of the equipment necessary to implement the use of credit and debit cards. Any equipment provided by the board to a contract liquor store for this purpose may be used only for the purchase of liquor.

(3) It is the board's responsibility to ensure that the equipment used by the contract liquor stores to accept debit or credit cards for liquor purchases complies with the requirements of RCW 74.08.580(2) with regard to point-of-sale machines.

(4) It is the contract liquor store's responsibility to comply with the requirements of RCW 74.08.580(2) pertaining to the use of electronic benefit transfer cards in ATM machines located on the contract liquor store premises. The board shall immediately suspend the contract it has with the contract liquor store if it receives information that the store has not complied with RCW 74.08.580(2). The board may reinstate the suspended contract when the contract liquor store has complied with RCW 74.08.580(2). [2011 1st sp.s. c 42 § 16; 2005 c 151 § 6; 2004 c 63 § 2; 1998 c 265 § 3; 1997 c 148 § 2; 1996 c 291 § 2.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Intent—1998 c 265: "It is the intent of the legislature that expenditures associated with the implementation of using credit and debit cards in state liquor stores and agency liquor vendor stores not have a negative impact to the liquor revolving fund balance and that transfers to the state general fund, the cities, and the counties not be reduced because of these costs." [1998 c 265 § 1.]

66.16.070 Liquor cannot be opened or consumed on store premises. (Effective until December 1, 2012.) No employee in a state liquor store shall open or consume, or allow to be opened or consumed any liquor on the store premises, except for the purposes of conducting on-premise spirits sampling pursuant to the provisions of chapter 186, Laws of 2011. [2011 c 186 § 3; 1933 ex.s. c 62 § 10; RRS § 7306-10.]

Spirit sampling—Liquor store pilot project—Expiration date—2011 c 186: See notes following RCW 66.08.050.

Chapter 66.20 RCW LIQUOR PERMITS

Sections

- 66.20.010 Permits classified—Issuance—Fees—Waiver of provisions during state of emergency.
- 66.20.300 Alcohol servers—Definitions.
- 66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions.

66.20.010 Permits classified—Issuance—Fees—Waiver of provisions during state of emergency. Upon application in the prescribed form being made to any employee authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the employee being satisfied that the applicant should be granted a permit under this title, the employee shall issue to the applicant under such regulations and at such fee as may be prescribed by the board a permit of the class applied for, as follows:

(1) Where the application is for a special permit by a physician or dentist, or by any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, a special liquor purchase permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(2) Where the application is for a special permit by a person engaged within the state in mechanical or manufacturing business or in scientific pursuits requiring alcohol for use therein, or by any private individual, a special permit to purchase alcohol for the purpose named in the permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(3) Where the application is for a special permit to consume liquor at a banquet, at a specified date and place, a special permit to purchase liquor for consumption at such banquet, to such applicants as may be fixed by the board;

(4) Where the application is for a special permit to consume liquor on the premises of a business not licensed under this title, a special permit to purchase liquor for consumption thereon for such periods of time and to such applicants as may be fixed by the board;

(5) Where the application is for a special permit by a manufacturer to import or purchase within the state alcohol, malt, and other materials containing alcohol to be used in the manufacture of liquor, or other products, a special permit;

(6) Where the application is for a special permit by a person operating a drug store to purchase liquor at retail prices only, to be thereafter sold by such person on the prescription of a physician, a special liquor purchase permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(7) Where the application is for a special permit by an authorized representative of a military installation operated by or for any of the armed forces within the geographical boundaries of the state of Washington, a special permit to purchase liquor for use on such military installation at prices to be fixed by the board;

(8) Where the application is for a special permit by a vendor that manufactures or sells a product which cannot be effectively presented to potential buyers without serving it with liquor or by a manufacturer, importer, or distributor, or representative thereof, to serve liquor without charge to delegates and guests at a convention of a trade association composed of licensees of the board, when the said liquor is served in a hospitality room or from a booth in a board-approved suppliers' display room at the convention, and when the

liquor so served is for consumption in the said hospitality room or display room during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a spirits, beer, and wine restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(9) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at a convention of a trade association composed of licensees of the board, when the liquor so donated is for consumption at the said reception, breakfast, luncheon, or dinner during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a spirits, beer, and wine restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(10) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate and/or serve liquor without charge to delegates and guests at an international trade fair, show, or exposition held under the auspices of a federal, state, or local governmental entity or organized and promoted by a nonprofit organization, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board and any such beer or wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(11) Where the application is for an annual special permit by a person operating a bed and breakfast lodging facility to donate or serve wine or beer without charge to overnight guests of the facility if the wine or beer is for consumption on the premises of the facility. "Bed and breakfast lodging facility," as used in this subsection, means a facility offering from one to eight lodging units and breakfast to travelers and guests. [2011 c 119 § 213; 2008 c 181 § 602; (2008 c 181 § 601 expired July 1, 2008); 2007 c 370 § 16; 1998 c 126 § 1; 1997 c 321 § 43; 1984 c 78 § 6; 1984 c 45 § 1; 1983 c 13 § 1; 1982 c 85 § 1; 1975-'76 2nd ex.s. c 62 § 2; 1959 c 111 § 2; 1951 2nd ex.s. c 13 § 1; 1933 ex.s. c 62 § 12; RRS § 7306-12.]

Effective date—2008 c 181 § 602: "Section 602 of this act takes effect July 1, 2008." [2008 c 181 § 604.]

Expiration date—2008 c 181 § 601: "Section 601 of this act expires July 1, 2008." [2008 c 181 § 603.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

Additional notes found at www.leg.wa.gov

66.20.300 Alcohol servers—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 66.20.310 through 66.20.350.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person who as part of his or her employment participates in the sale or service of alco-

holic beverages for on-premise consumption at a retail licensed premise as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board.

(5) "Retail licensed premises" means any:

(a) Premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, and 66.24.610;

(b) Distillery licensed pursuant to RCW 66.24.140 that is authorized to serve samples of its own production;

(c) Facility established by a domestic winery for serving and selling wine pursuant to RCW 66.24.170(4); and

(d) Grocery store licensed under RCW 66.24.360, but only with respect to employees whose duties include serving during tasting activities under RCW 66.24.363. [2011 c 325 § 5; 2010 c 141 § 3. Prior: 2008 c 94 § 10; 2008 c 41 § 1; 1997 c 321 § 44; 1996 c 218 § 2; 1995 c 51 § 2.]

Findings—1995 c 51: "The legislature finds that education of alcohol servers on issues such as the physiological effects of alcohol on consumers, liability and legal implications of serving alcohol, driving while intoxicated, and methods of intervention with the problem customer are important in protecting the health and safety of the public. The legislature further finds that it is in the best interest of the citizens of the state of Washington to have an alcohol server education program." [1995 c 51 § 1.]

Additional notes found at www.leg.wa.gov

66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions. (1)(a) There shall be an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There shall be an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every alcohol server employed, under contract or otherwise, at a retail licensed premise shall be issued a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued shall be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder shall present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit shall be valid for employment at any retail licensed premises described in (a) of this subsection.

(c) Except as provided in (d) of this subsection, no licensee holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, 66.24.600, and 66.24.610 may employ or accept

the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor shall have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350, except for employees whose duties include serving during tasting activities under RCW 66.24.363. [2011 c 325 § 4; 2010 c 141 § 2. Prior: 2009 c 271 § 5; 2009 c 187 § 4; prior: 2008 c 94 § 11; 2008 c 41 § 3; (2008 c 41 § 2 expired July 1, 2008); 2007 c 370 § 17; 1997 c 321 § 45; prior: 1996 c 311 § 1; 1996 c 218 § 3; 1995 c 51 § 3.]

Effective date—2008 c 94 §§ 4 and 11: See note following RCW 66.04.010.

Effective date—2008 c 41 §§ 3, 10, and 11: "Sections 3, 10, and 11 of this act take effect July 1, 2008." [2008 c 41 § 16.]

Expiration date—2008 c 41 § 2: "Section 2 of this act expires July 1, 2008." [2008 c 41 § 13.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Findings—1995 c 51: See note following RCW 66.20.300.

Additional notes found at www.leg.wa.gov

Chapter 66.24 RCW

LICENSES—STAMP TAXES

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66.24.610	VIP airport lounge operator.

66.24.010 Licensure—Issuance—Conditions and restrictions—Limitations—Temporary licenses. (1) Every license shall be issued in the name of the applicant, and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, or the renewal of a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension, revocation, or renewal or denial thereof, of any license, the liquor control board may consider any prior criminal conduct of the applicant including an administrative violation history record with the board and a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. Subject to the provisions of this section, the board may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted pursuant to subsections (8)(d) and (12) of this section. Authority to approve an uncontested or unopposed license may be granted by the board to any staff

member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

(a) A person doing business as a sole proprietor who has not resided in the state for at least one month prior to receiving a license, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(d) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.

(3)(a) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be.

(b) The board shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

(d) Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee may allow or cause any liquor

to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a spirits, beer, and wine restaurant license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized by this chapter. If such a system of staggered annual renewal dates is established by the board, the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by rules adopted by the board. All conditions and restrictions imposed by the board in the issuance of an individual license may be listed on the face of the individual license along with the trade name, address, and expiration date. Conditions and restrictions imposed by the board may also be included in official correspondence separate from the license.

(7) Every licensee shall post and keep posted its license, or licenses, and any additional correspondence containing conditions and restrictions imposed by the board in a conspicuous place on the premises.

(8)(a) Unless (b) of this subsection applies, before the board issues a new or renewal license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns.

(b) If the application for a special occasion license is for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on property owned by the county but located within an incorporated city or town, the county legislative authority shall be the entity notified by the board under (a) of this subsection. The board shall send a duplicate notice to the incorporated city or town within which the fair is located.

(c) The incorporated city or town through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the board within twenty days after the date of transmittal of such notice for applications, or at least thirty days prior to the expiration date for renewals, written objections against the applicant or against the premises for which the new or renewal license is asked. The board may extend the time period for submitting written objections.

(d) The written objections shall include a statement of all facts upon which such objections are based, and in case written objections are filed, the city or town or county legislative authority may request and the liquor control board may in its discretion hold a hearing subject to the applicable provisions of Title 34 RCW. If the board makes an initial decision to deny a license or renewal based on the written objections of an incorporated city or town or county legislative authority,

the applicant may request a hearing subject to the applicable provisions of Title 34 RCW. If such a hearing is held at the request of the applicant, liquor control board representatives shall present and defend the board's initial decision to deny a license or renewal.

(e) Upon the granting of a license under this title the board shall send written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns. When the license is for a special occasion license for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on county-owned property but located within an incorporated city or town, the written notification shall be sent to both the incorporated city or town and the county legislative authority.

(9)(a) Before the board issues any license to any applicant, it shall give (i) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (ii) written notice, with receipt verification, of the application to public institutions identified by the board as appropriate to receive such notice, churches, and schools within five hundred feet of the premises to be licensed. The board shall not issue a liquor license for either on-premises or off-premises consumption covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the main entrance of the school to the nearest public entrance of the premises proposed for license, and if, after receipt by the school of the notice as provided in this subsection, the board receives written objection, within twenty days after receiving such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. The board may extend the time period for submitting objections. For the purpose of this section, "church" means a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. For the purpose of this section, "public institution" means institutions of higher education, parks, community centers, libraries, and transit centers.

(b) No liquor license may be issued or reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies.

(c) It is the intent under this subsection (9) that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a pri-

vate school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in subsection (9) of this section shall not prohibit the board from authorizing the assumption of existing licenses now located within the restricted area by other persons or licenses or relocations of existing licensed premises within the restricted area. In no case may the licensed premises be moved closer to a church or school than it was before the assumption or relocation.

(11)(a) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or distributor license to an applicant to operate the retail or distributor premises during the period the application for the license is pending. The board may establish a fee for a temporary license by rule.

(b) A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for additional periods of sixty days upon payment of an additional fee and upon compliance with all conditions required in this section.

(c) Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 applies to temporary licenses.

(d) Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full.

(12) In determining whether to grant or deny a license or renewal of any license, the board shall give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency for the city, town, county, or any other municipal corporation or any state agency; or (b) an unreasonably high number of citations for violations of RCW 46.61.502 associated with the applicant's or licensee's operation of any licensed premises as indicated by the reported statements given to law enforcement upon arrest. [2011 c 195 § 1; 2009 c 271 § 6; 2007 c 473 § 1; 2006 c 359 § 1; 2004 c 133 § 1; 2002 c 119 § 3; 1998 c 126 § 2. Prior: 1997 c 321 § 1; 1997 c 58 § 873; 1995 c 232 § 1; 1988 c 200 § 1; 1987 c 217 § 1; 1983 c 160 § 3; 1982 c 85 § 2; 1981 1st ex.s. c 5 § 10; 1981 c 67 § 31; 1974 ex.s. c 66 § 1; 1973 1st ex.s. c 209 § 10; 1971 c 70 § 1; 1969 ex.s. c 178 § 3; 1947 c 144 § 1; 1935 c 174 § 3; 1933 ex.s. c 62 § 27; Rem. Supp. 1947 § 7306-27. Formerly RCW 66.24.010, part and 66.24.020 through

66.24.100. FORMER PART OF SECTION: 1937 c 217 § 1 (23U) now codified as RCW 66.24.025.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

66.24.013 License suspension—Electronic benefit cards. The board shall immediately suspend the license of a business that has been issued a license under RCW 66.24.330, 66.24.371, or 66.24.600 if the board receives information that the business has not complied with RCW 74.08.580(2). If the licensee has remained otherwise eligible to be licensed, the board may reinstate the suspended license when the business has complied with RCW 74.08.580(2). [2011 1st sp.s. c 42 § 15.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

66.24.170 Domestic winery license—Winery as distributor and/or retailer of own wine—Off-premise samples—Domestic wine made into sparkling wine—Sales at qualifying farmers markets. (Effective until December 1, 2012.) (1) There shall be a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year, one hundred dollars per year; and two hundred fifty thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a retailer of wine of its own production. Any domestic winery licensed under this section may act as a distributor of its own production. Notwithstanding any language in this title to the contrary, a domestic winery may use a common carrier to deliver up to one hundred cases of its own production, in the aggregate, per month to licensed Washington retailers. A domestic winery may not arrange for any such common carrier shipments to licensed retailers of wine not of its own production. Except as provided in this section, any winery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a winery operating as a distributor may maintain a warehouse off the premises of the winery for the distribution of wine of its own production provided that: (a) The warehouse has been approved by the board under RCW 66.24.010; and (b) the number of warehouses off the premises of the winery does not exceed one.

(4) A domestic winery licensed under this section, at locations separate from any of its production or manufacturing sites, may serve samples of its own products, with or without charge, and sell wine of its own production at retail, provided that: (a) Each additional location has been approved by the board under RCW 66.24.010; (b) the total number of additional locations does not exceed two; (c) a winery may not act as a distributor at any such additional location; and (d) any person selling or serving wine at an additional location for on-premise consumption must obtain a class 12 or class 13 alcohol server permit. Each additional location is deemed to be part of the winery license for the pur-

pose of this title. At additional locations operated by multiple wineries under this section, if the board cannot connect a violation of RCW 66.44.200 or 66.44.270 to a single licensee, the board may hold all licensees operating the additional location jointly liable. Nothing in this subsection shall be construed to prevent a domestic winery from holding multiple domestic winery licenses.

(5)(a) A domestic winery licensed under this section may apply to the board for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars. An endorsement issued pursuant to this subsection does not count toward the two additional retail locations limit specified in this section.

(b) For each month during which a domestic winery will sell wine at a qualifying farmers market, the winery must provide the board or its designee a list of the dates, times, and locations at which bottled wine may be offered for sale. This list must be received by the board before the winery may offer wine for sale at a qualifying farmers market.

(c) The wine sold at qualifying farmers markets must be made entirely from grapes grown in a recognized Washington appellation or from other agricultural products grown in this state.

(d) Each approved location in a qualifying farmers market is deemed to be part of the winery license for the purpose of this title. Except as provided in section 1, chapter 62, Laws of 2011, the approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a winery. The winery may not store wine at a farmers market beyond the hours that the winery offers bottled wine for sale. The winery may not act as a distributor from a farmers market location.

(e) Before a winery may sell bottled wine at a qualifying farmers market, the farmers market must apply to the board for authorization for any winery with an endorsement approved under this subsection to sell bottled wine at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved winery may sell bottled wine; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled wine may be sold. Before authorizing a qualifying farmers market to allow an approved winery to sell bottled wine at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license. [2011 c 62 § 2; 2009 c 373 § 4; 2008 c 41 § 5; 2007 c 16 § 2; 2006 c 302 § 1; 2003 c 44 § 1; 2000 c 141 § 1; 1997 c 321 § 3; 1991 c 192 § 2; 1982 c 85 § 4; 1981 1st ex.s. c 5 § 31; 1939 c 172 § 1 (23C); 1937 c 217 § 1 (23C) (adding new section 23-C to 1933 ex.s. c 62); RRS § 7306-23C. Formerly RCW 66.24.170, 66.24.180, and 66.24.190.]

Wine tasting at farmers markets—Pilot project—2011 c 62: "(1) The liquor control board shall establish a pilot project as provided in this section to allow beer and wine tasting at farmers markets.

(2) The pilot project shall consist of ten farmers markets with at least six days of tastings to be conducted by a winery or microbrewery at each farmers market between September 1, 2011, and November 1, 2012. The pilot project farmers markets shall be selected by the liquor control board in consultation with statewide organizations of farmers markets. The board shall make an effort to select farmers markets throughout the entire state.

(3) Farmers markets chosen to participate in the pilot project must be authorized on January 1, 2011, to allow wineries to sell bottled wine at retail under RCW 66.24.170. A farmers market with a microbrewery providing samples under this section must also be authorized on January 1, 2011, to allow microbreweries to sell bottled beer at retail under RCW 66.24.244. A winery or microbrewery offering samples under this section must have an endorsement on May 1, 2011, from the board to sell wine or beer, as the case may be, of its own production at a farmers market under RCW 66.24.170 or 66.24.244, respectively.

(4) Only one winery or microbrewery may offer samples at a farmers market per day.

(5) Samples may be offered only under the following conditions:

(a) Each sample must be two ounces or less, up to a total of four ounces per customer per day. A winery or microbrewery may provide only one sample of any single brand and type of wine or beer to a customer per day.

(b) A winery or microbrewery may advertise that it offers samples only at its designated booth, stall, or other designated location at the farmers market.

(c) Customers must remain at the designated booth, stall, or other designated location while sampling beer or wine.

(d) Winery and microbrewery licensees and employees who are involved in sampling activities under this section must hold a class 12 or class 13 alcohol server permit.

(e) A winery or microbrewery must have food available for customers to consume while sampling beer or wine, or must be adjacent to a vendor offering prepared food.

(6) The board may establish additional requirements to ensure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol under the authority granted in this section.

(7) The board may prohibit sampling at a farmers market that is within the boundaries of an alcohol impact area recognized by resolution of the board if the board finds that the sampling activities at the farmers market are having an adverse effect on the reduction of chronic public inebriation in the area.

(8) If a winery or microbrewery is found to have committed a public safety violation in conjunction with tasting activities, the board may suspend the licensee's farmers market endorsement and not reissue the endorsement for up to two years from the date of the violation. If mitigating circumstances exist, the board may offer a monetary penalty in lieu of suspension during a settlement conference.

(9) The board shall report on the pilot project to the appropriate committees of the legislature by December 1, 2012." [2011 c 62 § 1.]

Expiration date—2011 c 62: "This act expires December 1, 2012." [2011 c 62 § 5.]

Effective date—2006 c 302: "Except for sections 10 and 12 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 14, 2006." [2006 c 302 § 16.]

Additional notes found at www.leg.wa.gov

66.24.240 Domestic brewery's license—Fee. (1)

There shall be a license for domestic breweries; fee to be two thousand dollars for production of sixty thousand barrels or more of malt liquor per year.

(2) Any domestic brewery, except for a brand owner of malt beverages under RCW 66.04.010(7), licensed under this section may also act as a distributor and/or retailer for beer of its own production. Any domestic brewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. A domestic brewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) Any domestic brewery licensed under this section may also sell beer produced by another domestic brewery or a microbrewery for on and off-premises consumption from its premises as long as the other breweries' brands do not exceed twenty-five percent of the domestic brewery's on-tap offering of its own brands.

(4) A domestic brewery may hold up to two retail licenses to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant. This retail license is separate from the brewery license. A brewery that holds a tavern license, a spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

(5) Any domestic brewery licensed under this section may contract-produce beer for a brand owner of malt beverages defined under RCW 66.04.010(7), and this contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

(6)(a) A domestic brewery licensed under this section and qualified for a reduced rate of taxation pursuant to RCW 66.24.290(3)(b) may apply to the board for an endorsement

to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a domestic brewery will sell beer at a qualifying farmers market, the domestic brewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the domestic brewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the domestic brewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a domestic brewery. The domestic brewery may not store beer at a farmers market beyond the hours that the domestic brewery offers bottled beer for sale. The domestic brewery may not act as a distributor from a farmers market location.

(e) Before a domestic brewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any domestic brewery with an endorsement approved under this subsection to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved domestic brewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved domestic brewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (6)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer. [2011 c 195 § 6; 2011 c 119 § 212; 2008 c 41 § 7; (2008 c 41 § 6 expired June 30, 2008); 2007 c 370 § 7; (2007 c 370 § 6 expired June 30, 2008). Prior: 2006 c 302 § 2; 2006 c 44 § 1; 2003 c 154 § 1; 2000 c 142 § 2; 1997 c 321 § 11; 1985 c 226 § 1; 1982 c 85 § 5; 1981 1st ex.s. c 5 § 13; 1937 c 217 § 1 (23B) (adding new section 23-B to 1933 ex.s. c 62); RRS § 7306-23B.]

Reviser's note: This section was amended by 2011 c 119 § 212 and by 2011 c 195 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2008 c 41 §§ 7 and 9: "Sections 7 and 9 of this act take effect June 30, 2008." [2008 c 41 § 15.]

Expiration date—2008 c 41 §§ 6 and 8: "Sections 6 and 8 of this act expire June 30, 2008." [2008 c 41 § 14.]

Effective date—2007 c 370 §§ 5 and 7: See note following RCW 66.24.244.

Expiration date—2007 c 370 §§ 4 and 6: See note following RCW 66.24.244.

Effective date—2006 c 302: See note following RCW 66.24.170.

Additional notes found at www.leg.wa.gov

66.24.244 Microbrewery's license—Fee. (Effective until December 1, 2012.) (1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery licensed under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a microbrewery operating as a distributor may maintain a warehouse off the premises of the microbrewery for the distribution of beer provided that (a) the warehouse has been approved by the board under RCW 66.24.010 and (b) the number of warehouses off the premises of the microbrewery does not exceed one. A microbrewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) Any microbrewery licensed under this section may also sell beer produced by another microbrewery or a domestic brewery for on and off-premises consumption from its premises as long as the other breweries' brands do not exceed

twenty-five percent of the microbrewery's on-tap offering of its own brands.

(4) The board may issue up to two retail licenses allowing a microbrewery to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant.

(5) A microbrewery that holds a tavern license, spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

(6)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. Except as provided in section 1, chapter 62, Laws of 2011, the approved locations under an endorsement granted under this subsection (6) do not constitute the tasting or sampling privilege of a microbrewery. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(e) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection (6) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (6)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(g) For the purposes of this subsection (6):

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer

under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(7) Any microbrewery licensed under this section may contract-produce beer for another microbrewer. This contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180. [2011 c 195 § 5; 2011 c 62 § 3. Prior: 2008 c 248 § 2; (2008 c 248 § 1 expired June 30, 2008); 2008 c 41 § 9; (2008 c 41 § 8 expired June 30, 2008); prior: 2007 c 370 § 5; (2007 c 370 § 4 expired June 30, 2008); 2007 c 222 § 2; (2007 c 222 § 1 expired June 30, 2008); 2006 c 302 § 3; 2006 c 44 § 2; prior: 2003 c 167 § 1; 2003 c 154 § 2; 1998 c 126 § 3; 1997 c 321 § 12.]

Reviser's note: This section was amended by 2011 c 62 § 3 and by 2011 c 195 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Wine tasting at farmers markets—Pilot project—Expiration date—2011 c 62: See notes following RCW 66.24.170.

Effective date—2008 c 248 § 2: "Section 2 of this act takes effect June 30, 2008." [2008 c 248 § 4.]

Expiration date—2008 c 248 § 1: "Section 1 of this act expires June 30, 2008." [2008 c 248 § 3.]

Effective date—2008 c 41 §§ 7 and 9: See note following RCW 66.24.240.

Expiration date—2008 c 41 §§ 6 and 8: See note following RCW 66.24.240.

Effective date—2007 c 370 §§ 5 and 7: "Sections 5 and 7 of this act take effect June 30, 2008." [2007 c 370 § 22.]

Expiration date—2007 c 370 §§ 4 and 6: "Sections 4 and 6 of this act expire June 30, 2008." [2007 c 370 § 21.]

Effective date—2007 c 222 § 2: "Section 2 of this act takes effect June 30, 2008." [2007 c 222 § 5.]

Expiration date—2007 c 222 § 1: "Section 1 of this act expires June 30, 2008." [2007 c 222 § 4.]

Effective date—2006 c 302: See note following RCW 66.24.170.

Effective date—2003 c 167: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 167 § 14.]

[2011 RCW Supp—page 1310]

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Additional notes found at www.leg.wa.gov

66.24.244 Microbrewery's license—Fee. (Effective December 1, 2012.) (1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery licensed under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a microbrewery operating as a distributor may maintain a warehouse off the premises of the microbrewery for the distribution of beer provided that (a) the warehouse has been approved by the board under RCW 66.24.010 and (b) the number of warehouses off the premises of the microbrewery does not exceed one. A microbrewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) Any microbrewery licensed under this section may also sell beer produced by another microbrewery or a domestic brewery for on and off-premises consumption from its premises as long as the other breweries' brands do not exceed twenty-five percent of the microbrewery's on-tap offering of its own brands.

(4) The board may issue up to two retail licenses allowing a microbrewery to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant.

(5) A microbrewery that holds a tavern license, spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

(6)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection (6) do not consti-

tute the tasting or sampling privilege of a microbrewery. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(e) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection (6) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (6)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(g) For the purposes of this subsection (6):

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(7) Any microbrewery licensed under this section may contract-produce beer for another microbrewer. This contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180. [2011 c 195 § 5. Prior: 2008 c 248 § 2; (2008 c 248 § 1 expired June 30, 2008); 2008 c 41 § 9;

(2008 c 41 § 8 expired June 30, 2008); prior: 2007 c 370 § 5; (2007 c 370 § 4 expired June 30, 2008); 2007 c 222 § 2; (2007 c 222 § 1 expired June 30, 2008); 2006 c 302 § 3; 2006 c 44 § 2; prior: 2003 c 167 § 1; 2003 c 154 § 2; 1998 c 126 § 3; 1997 c 321 § 12.]

Effective date—2008 c 248 § 2: "Section 2 of this act takes effect June 30, 2008." [2008 c 248 § 4.]

Expiration date—2008 c 248 § 1: "Section 1 of this act expires June 30, 2008." [2008 c 248 § 3.]

Effective date—2008 c 41 §§ 7 and 9: See note following RCW 66.24.240.

Expiration date—2008 c 41 §§ 6 and 8: See note following RCW 66.24.240.

Effective date—2007 c 370 §§ 5 and 7: "Sections 5 and 7 of this act take effect June 30, 2008." [2007 c 370 § 22.]

Expiration date—2007 c 370 §§ 4 and 6: "Sections 4 and 6 of this act expire June 30, 2008." [2007 c 370 § 21.]

Effective date—2007 c 222 § 2: "Section 2 of this act takes effect June 30, 2008." [2007 c 222 § 5.]

Expiration date—2007 c 222 § 1: "Section 1 of this act expires June 30, 2008." [2007 c 222 § 4.]

Effective date—2006 c 302: See note following RCW 66.24.170.

Effective date—2003 c 167: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 167 § 14.]

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Additional notes found at www.leg.wa.gov

66.24.310 Representative's license—Qualifications—Conditions and restrictions—Fee. (1)(a) Except as provided in (b) of this subsection, no person shall canvass for, solicit, receive, or take orders for the purchase or sale of liquor, nor contact any licensees of the board in goodwill activities, unless such person shall be the accredited representative of a person, firm, or corporation holding a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a beer distributor's license, a microbrewer's license, a domestic brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington, or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine, and shall have applied for and received a representative's license.

(b) (a) of this subsection shall not apply to: (i) Drivers who deliver beer or wine; or (ii) domestic wineries or their employees.

(2) Every representative's license issued under this title shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board; the board, for the purpose of maintaining an orderly market, may limit the number of representative's licenses issued for representation of specific classes of eligible employers.

(3) Every application for a representative's license must be approved by a holder of a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a licensed beer distributor, a licensed domestic brewer, a licensed beer importer, a licensed microbrewer, a licensed domestic winery, a licensed wine importer, a licensed wine distributor, or by a distiller, manufacturer, importer, or distributor of spirituous

liquor, or foreign produced beer or wine, as the rules and regulations of the board shall require.

(4) The fee for a representative's license shall be twenty-five dollars per year.

(5) An accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may, after he or she has applied for and received a representative's license, contact retail licensees of the board only in goodwill activities pertaining to spirituous liquor products. [2011 c 119 § 301; 1997 c 321 § 17; 1981 1st ex.s. c 5 § 36; 1975-'76 2nd ex.s. c 74 § 1; 1971 ex.s. c 138 § 1; 1969 ex.s. c 21 § 5; 1939 c 172 § 2; 1937 c 217 § 1 (23I) (adding new section 23-I to 1933 ex.s. c 62); RRS § 7306-23I.]

Additional notes found at www.leg.wa.gov

66.24.360 Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—Endorsements. There shall be a beer and/or wine retailer's license to be designated as a grocery store license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores.

(1) Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid.

(2) The annual fee for the grocery store license is one hundred fifty dollars for each store.

(3) The board shall issue a restricted grocery store license authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a grocery store license must maintain a minimum three thousand dollar inventory of food products for human consumption, not including pop, beer, strong beer, or wine.

(5) Upon approval by the board, the grocery store licensee may also receive an endorsement to permit the international export of beer, strong beer, and wine.

(a) Any beer, strong beer, or wine sold under this endorsement must have been purchased from a licensed beer or wine distributor licensed to do business within the state of Washington.

(b) Any beer, strong beer, and wine sold under this endorsement must be intended for consumption outside the state of Washington and the United States and appropriate records must be maintained by the licensee.

(c) Any beer, strong beer, or wine sold under this license must be sold at a price no less than the acquisition price paid by the holder of the license.

(d) The annual cost of this endorsement is five hundred dollars and is in addition to the license fees paid by the licensee for a grocery store license.

(6) A grocery store licensee holding a snack bar license under RCW 66.24.350 may receive an endorsement to allow the sale of confections containing more than one percent but not more than ten percent alcohol by weight to persons twenty-one years of age or older. [2011 c 119 § 203; (2009 c 507 § 5 expired July 1, 2011); 2007 c 226 § 2; 2003 c 167 § 8; 1997 c 321 § 22; 1993 c 21 § 1; 1991 c 42 § 4; 1987 c 46 § 1; 1981 1st ex.s. c 5 § 41; 1967 ex.s. c 75 § 6; 1937 c 217 § 1 (23Q) (adding new section 23-Q to 1933 ex.s. c 62); RRS § 7306-23Q.]

Expiration date—2009 c 507: See note following RCW 66.08.225.

Application to certain retailers—2003 c 167 §§ 8 and 9: "Sections 8 and 9 of this act apply to retailers who hold a restricted grocery store license or restricted beer and/or wine specialty shop license on or after July 1, 2003." [2003 c 167 § 12.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Employees under eighteen allowed to handle beer or wine: RCW 66.44.340.

Additional notes found at www.leg.wa.gov

66.24.371 Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory. (1) There shall be a beer and/or wine retailer's license to be designated as a beer and/or wine specialty shop license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. The annual fee for the beer and/or wine specialty shop license is one hundred dollars for each store. The sale of any container holding four gallons or more must comply with RCW 66.28.200 and 66.28.220.

(2) Licensees under this section may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section are subject to RCW 66.28.305 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or distributor of liquor.

(3) Upon approval by the board, the beer and/or wine specialty shop licensee that exceeds fifty percent beer and/or wine sales may also receive an endorsement to permit the sale of beer to a purchaser in a sanitary container brought to the premises by the purchaser, or provided by the licensee or manufacturer, and fill at the tap by the licensee at the time of sale. If the beer and/or wine specialty shop licensee does not exceed fifty percent beer and/or wine sales, the board may waive the fifty percent beer and/or wine sale criteria if the

beer and/or wine specialty shop maintains alcohol inventory that exceeds fifteen thousand dollars.

(4) The board shall issue a restricted beer and/or wine specialty shop license, authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(5) Licensees holding a beer and/or wine specialty shop license must maintain a minimum three thousand dollar wholesale inventory of beer, strong beer, and/or wine.

(6) The board may adopt rules to implement this section. [2011 c 195 § 4; 2011 c 119 § 204; (2009 c 507 § 6 expired July 1, 2011); 2009 c 373 § 6; 2003 c 167 § 9; 1997 c 321 § 23.]

Reviser's note: This section was amended by 2011 c 119 § 204 and by 2011 c 195 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2009 c 507: See note following RCW 66.08.225.

Application to certain retailers—2003 c 167 §§ 8 and 9: See note following RCW 66.24.360.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Additional notes found at www.leg.wa.gov

66.24.400 Liquor by the drink, spirits, beer, and wine restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when. (1) There shall be a retailer's license, to be known and designated as a spirits, beer, and wine restaurant license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only. A club licensed under chapter 70.62 RCW with overnight sleeping accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the club for consumption in guest rooms, hospitality rooms, or at banquets in the club. A patron of a bona fide restaurant or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the club by the bottle may remove from the premises any unused portion of such

liquor in its original container. Such license may be issued only to bona fide restaurants and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a spirits, beer, and wine restaurant license under the provisions and limitations of this title.

(2) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell bottled wine for off-premises consumption. Spirits and beer may not be sold for off-premises consumption under this section except as provided in subsection (4) of this section. The annual fee for the endorsement under this subsection is one hundred twenty dollars.

(3) The holder of a spirits, beer, and wine license or its manager may furnish beer, wine, or spirituous liquor to the licensee's employees free of charge as may be required for use in connection with instruction on beer, wine, or spirituous liquor. The instruction may include the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, and spirituous liquor. The spirits, beer, and wine restaurant licensee must use the beer, wine, or spirituous liquor it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the spirits, beer, and wine restaurant licensee.

(4) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption malt liquor in kegs or other containers that are capable of holding four gallons or more of liquid and are registered in accordance with RCW 66.28.200. Beer may also be sold under the endorsement to a purchaser in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the retailer at the time of sale. The annual fee for the endorsement under this subsection is one hundred twenty dollars. [2011 c 119 § 401; (2009 c 507 § 8 expired July 1, 2011); 2008 c 41 § 10. Prior: 2007 c 370 § 13; 2007 c 53 § 1; 2005 c 152 § 2; 2001 c 199 § 4; 1998 c 126 § 5; 1997 c 321 § 26; 1987 c 196 § 1; 1986 c 208 § 1; 1981 c 94 § 2; 1977 ex.s. c 9 § 4; 1971 ex.s. c 208 § 1; 1949 c 5 § 1 (adding new section 23-S-1 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-1.]

Expiration date—2009 c 507: See note following RCW 66.08.225.

Effective date—2008 c 41 §§ 3, 10, and 11: See note following RCW 66.20.310.

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Additional notes found at www.leg.wa.gov

66.24.410 Liquor by the drink, spirits, beer, and wine restaurant license—Terms defined. (1) "Spirituous liquor," as used in RCW 66.24.400 to 66.24.450, inclusive, means "liquor" as defined in RCW 66.04.010, except "wine" and "beer" sold as such.

(2) "Restaurant" as used in RCW 66.24.400 to 66.24.450, inclusive, means an establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains: PROVIDED, That such establishments shall be approved by the board and that the board shall be satisfied that such establishment is maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. Requirements for complete meals shall be determined by the board in rules adopted pursuant to chapter 34.05 RCW.

(3) "Hotel," "clubs," "wine" and "beer" are used in RCW 66.24.400 to 66.24.450, inclusive, with the meaning given in chapter 66.04 RCW. [2011 c 195 § 2; 2007 c 370 § 18; 1983 c 3 § 164; 1981 1st ex.s. c 5 § 17; 1969 ex.s. c 112 § 1; 1957 c 263 § 2. Prior: 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Additional notes found at www.leg.wa.gov

66.24.440 Liquor by the drink, spirits, beer, and wine restaurant, spirits, beer, and wine private club, hotel, spirits, beer, and wine nightclub, sports entertainment facility, and VIP airport lounge license—Purchase of liquor by licensees—Discount. Each spirits, beer, and wine restaurant, spirits, beer, and wine private club, hotel, spirits, beer, and wine nightclub, sports entertainment facility licensee, and VIP airport lounge licensee shall be entitled to purchase any spirituous liquor items salable under such license from the board at a discount of not less than fifteen percent from the retail price fixed by the board, together with all taxes. [2011 c 325 § 3; 2009 c 271 § 8; 2007 c 370 § 20; 1998 c 126 § 8; 1997 c 321 § 29; 1949 c 5 § 5 (adding new section 23-S-5 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-5.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Additional notes found at www.leg.wa.gov

66.24.450 Liquor by the drink, spirits, beer, and wine private club license—Qualifications—Fee. (1) No club shall be entitled to a spirits, beer, and wine private club license:

(a) Unless such private club has been in continuous operation for at least one year immediately prior to the date of its application for such license;

(b) Unless the private club premises be constructed and equipped, conducted, managed, and operated to the satisfaction of the board and in accordance with this title and the regulations made thereunder;

(c) Unless the board shall have determined pursuant to any regulations made by it with respect to private clubs, that such private club is a bona fide private club; it being the intent of this section that license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide private club, where the sale of liquor is incidental to the main purposes of the spirits, beer, and wine private club, as defined in RCW 66.04.010(8).

(2) The annual fee for a spirits, beer, and wine private club license, whether inside or outside of an incorporated city or town, is seven hundred twenty dollars per year.

(3) The board may issue an endorsement to the spirits, beer, and wine private club license that allows nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement shall be an annual fee of nine hundred dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours prior to the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

(4) The board may issue an endorsement to the spirits, beer, and wine private club license that allows the holder of a spirits, beer, and wine private club license to sell bottled wine for off-premises consumption. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars. [2011 c 119 § 402; (2009 c 507 § 11 expired July 1, 2011); 2009 c 373 § 2; 2001 c 199 § 1; 1999 c 281 § 5. Prior: 1998 c 126 § 9; 1998 c 114 § 1; 1997 c 321 § 30; 1981 1st ex.s. c 5 § 18; 1949 c 5 § 6; 1937 c 217 § 1 (23T) (adding new section 23-T to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23T.]

Expiration date—2009 c 507: See note following RCW 66.08.225.

Additional notes found at www.leg.wa.gov

66.24.570 Sports entertainment facility license—Fee—Caterer's endorsement—Financial arrangements—Reporting. (1) There is a license for sports entertainment facilities to be designated as a sports entertainment facility license to sell beer, wine, and spirits at retail, for consumption upon the premises only, the license to be issued to the entity providing food and beverage service at a sports entertainment facility as defined in this section. The cost of the license is two thousand five hundred dollars per annum.

(2) For purposes of this section, a sports entertainment facility includes a publicly or privately owned arena, coliseum, stadium, or facility where sporting events are presented for a price of admission. The facility does not have to be exclusively used for sporting events.

(3) The board may impose reasonable requirements upon a licensee under this section, such as requirements for the availability of food and victuals including but not limited to hamburgers, sandwiches, salads, or other snack food. The board may also restrict the type of events at a sports entertainment facility at which beer, wine, and spirits may be served. When imposing conditions for a licensee, the board must consider the seating accommodations, eating facilities, and circulation patterns in such a facility, and other amenities available at a sports entertainment facility.

(4)(a) The board may issue a caterer's endorsement to the license under this section to allow the licensee to remove from the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society

or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(5) The board may issue an endorsement to the beer, wine, and spirits sports entertainment facility license that allows the holder of a beer, wine, and spirits sports entertainment facility license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars.

(6)(a) A licensee and an affiliated business may enter into arrangements with a manufacturer, importer, or distributor for brand advertising at the sports entertainment facility or promotion of events held at the sports entertainment facility, with a capacity of five thousand people or more. The financial arrangements providing for the brand advertising or promotion of events shall not be used as an inducement to purchase the products of the manufacturer, importer, or distributor entering into the arrangement nor shall it result in the exclusion of brands or products of other companies.

(b) The arrangements allowed under this subsection (6) are an exception to arrangements prohibited under RCW 66.28.305. The board shall monitor the impacts of these arrangements. The board may conduct audits of the licensee and the affiliated business to determine compliance with this subsection (6). Audits may include but are not limited to product selection at the facility; purchase patterns of the licensee; contracts with the liquor manufacturer, importer, or distributor; and the amount allocated or used for liquor advertising by the licensee, affiliated business, manufacturer, importer, or distributor under the arrangements.

(c) The board shall report to the appropriate committees of the legislature by December 30, 2008, and biennially thereafter, on the impacts of arrangements allowed between sports entertainment licensees and liquor manufacturers, importers, and distributors for brand advertising and promotion of events at the facility. [2011 c 119 § 205; 2007 c 369 § 2; 2003 c 345 § 3; 2001 c 199 § 5; 1997 c 321 § 36; 1996 c 218 § 1.]

Additional notes found at www.leg.wa.gov

66.24.580 Public house license—Fees—Limitations.

(1) A public house license allows the licensee:

(a) To annually manufacture no less than two hundred fifty gallons and no more than two thousand four hundred barrels of beer on the licensed premises;

(b) To sell product, that is produced on the licensed premises, at retail on the licensed premises for consumption on the licensed premises;

(c) To sell beer or wine not of its own manufacture for consumption on the licensed premises if the beer or wine has been purchased from a licensed beer or wine wholesaler;

(d) To apply for and, if qualified and upon the payment of the appropriate fee, be licensed as a spirits, beer, and wine restaurant to do business at the same location. This fee is in addition to the fee charged for the basic public house license.

(2) RCW 66.28.305 applies to a public house license.

(3) A public house licensee must pay all applicable taxes on production as are required by law, and all appropriate taxes must be paid for any product sold at retail on the licensed premises.

(4) The employees of the licensee must comply with the provisions of mandatory server training in RCW 66.20.300 through 66.20.350.

(5) The holder of a public house license may not hold a wholesaler's or importer's license, act as the agent of another manufacturer, wholesaler, or importer, or hold a brewery or winery license.

(6) The annual license fee for a public house is one thousand dollars.

(7) The holder of a public house license may hold other licenses at other locations if the locations are approved by the board.

(8) Existing holders of annual retail liquor licenses may apply for and, if qualified, be granted a public house license at one or more of their existing liquor licensed locations without discontinuing business during the application or construction stages. [2011 c 119 § 206; (2009 c 507 § 13 expired July 1, 2011); 1999 c 281 § 6; 1996 c 224 § 2.]

Expiration date—2009 c 507: See note following RCW 66.08.225.

Intent—1996 c 224: "It is the intent of the legislature that holders of annual on-premises retail liquor licenses be allowed to operate manufacturing facilities on those premises. This privilege is viewed as a means of enhancing and meeting the needs of the licensees' patrons without being in violation of the tied-house statute prohibitions of RCW 66.28.010. Furthermore, it is the intention of the legislature that this type of business not be viewed as primarily a manufacturing facility. Rather, the public house licensee shall be viewed as an annual retail licensee who is making malt liquor for on-premises consumption by the patrons of the licensed premises." [1996 c 224 § 1.]

66.24.590 Hotel license—Fee—Limitations. (1)

There shall be a retailer's license to be designated as a hotel license. No license may be issued to a hotel offering rooms to its guests on an hourly basis. Food service provided for room service, banquets or conferences, or restaurant operation under this license shall meet the requirements of rules adopted by the board.

(2) The hotel license authorizes the licensee to:

(a) Sell spirituous liquor, beer, and wine, by the individual glass, at retail, for consumption on the premises, including mixed drinks and cocktails compounded and mixed on the premises;

(b) Sell, at retail, from locked honor bars, in individual units, spirits not to exceed fifty milliliters, beer in individual units not to exceed twelve ounces, and wine in individual bottles not to exceed three hundred eighty-five milliliters, to registered guests of the hotel for consumption in guest rooms.

The licensee shall require proof of age from the guest renting a guest room and requesting the use of an honor bar. The guest shall also execute an affidavit verifying that no one under twenty-one years of age shall have access to the spirits, beer, and wine in the honor bar;

(c) Provide without additional charge, to overnight guests, spirits, beer, and wine by the individual serving for on-premises consumption at a specified regular date, time, and place as may be fixed by the board. Self-service by attendees is prohibited;

(d) Sell beer, including strong beer, wine, or spirits, in the manufacturer's sealed container or by the individual drink to guests through room service, or through service to occupants of private residential units which are part of the buildings or complex of buildings that include the hotel;

(e) Sell beer, including strong beer, or wine, in the manufacturer's sealed container at retail sales locations within the hotel premises;

(f) Sell beer to a purchaser in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap in the restaurant area by the licensee at the time of sale;

(g) Sell for on or off-premises consumption, including through room service and service to occupants of private residential units managed by the hotel, wine carrying a label exclusive to the hotel license holder;

(h) Place in guest rooms at check-in, a complimentary bottle of beer, including strong beer, or wine in a manufacturer-sealed container, and make a reference to this service in promotional material.

(3) If all or any facilities for alcoholic beverage service and the preparation, cooking, and serving of food are operated under contract or joint venture agreement, the operator may hold a license separate from the license held by the operator of the hotel. Food and beverage inventory used in separate licensed operations at the hotel may not be shared and shall be separately owned and stored by the separate licensees.

(4) All spirits to be sold under this license must be purchased from the board.

(5) All on-premise alcoholic beverage service must be done by an alcohol server as defined in RCW 66.20.300 and must comply with RCW 66.20.310.

(6)(a) The hotel license allows the licensee to remove from the liquor stocks at the licensed premises, liquor for sale and service at event locations at a specified date and place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived.

(b) The holder of this license shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) Licensees may cater events on a domestic winery premises.

(7) The holder of this license or its manager may furnish spirits, beer, or wine to the licensee's employees who are twenty-one years of age or older free of charge as may be required for use in connection with instruction on spirits, beer, and wine. The instruction may include the history, nature, values, and characteristics of spirits, beer, or wine, the use of wine lists, and the methods of presenting, serving, storing, and handling spirits, beer, or wine. The licensee must use the beer or wine it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the licensee.

(8) Minors may be allowed in all areas of the hotel where alcohol may be consumed; however, the consumption must be incidental to the primary use of the area. These areas include, but are not limited to, tennis courts, hotel lobbies, and swimming pool areas. If an area is not a mixed use area, and is primarily used for alcohol service, the area must be designated and restricted to access by minors.

(9) The annual fee for this license is two thousand dollars.

(10) As used in this section, "hotel," "spirits," "beer," and "wine" have the meanings defined in RCW 66.24.410 and 66.04.010. [2011 c 119 § 403; 2008 c 41 § 11; 2007 c 370 § 11.]

Effective date—2008 c 41 §§ 3, 10, and 11: See note following RCW 66.20.310.

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

66.24.610 VIP airport lounge operator. There shall be a license to allow a VIP airport lounge operator to sell or otherwise provide spirits, wine, and beer solely for consumption on the premises of a VIP airport lounge. The license described in this section allows the VIP airport lounge operator to purchase spirits from the board, and to purchase beer and wine at retail outlets, or from the manufacturer or a distributor. No licensee may serve liquor from a bar where patrons may sit to be served, but may only serve liquor from a service bar, as approved by the board. The annual fee for this license shall be two thousand dollars. [2011 c 325 § 1.]

Chapter 66.28 RCW

MISCELLANEOUS REGULATORY PROVISIONS

Sections

66.28.010	Repealed.
66.28.040	Giving away of liquor prohibited—Exceptions. (<i>Effective until December 1, 2012.</i>)
66.28.040	Giving away of liquor prohibited—Exceptions. (<i>Effective December 1, 2012.</i>)
66.28.042	Providing food and beverages for business meetings permitted.
66.28.043	Providing food, beverages, transportation, and admission to events permitted.
66.28.155	Breweries, microbreweries, wineries, distilleries, distributors, certificate of approval holders, and agents authorized to conduct educational activities on licensed premises of retailer.
66.28.190	Sales of nonliquor food and food ingredients.
66.28.290	Three-tier system—Direct or indirect interests between industry members, affiliates, and retailers.
66.28.295	Three-tier system—Direct or indirect interests—Allowed activities.
66.28.310	Three-tier system—Promotional items.

66.28.010 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

66.28.040 Giving away of liquor prohibited—Exceptions. (Effective until December 1, 2012.) Except as permitted by the board under RCW 66.20.010, no domestic brewery, microbrewery, distributor, distiller, domestic winery, importer, rectifier, certificate of approval holder, or other manufacturer of liquor shall, within the state of Washington, give to any person any liquor; but nothing in this section nor in RCW 66.28.305 prevents a domestic brewery, microbrewery, distributor, domestic winery, distiller, certificate of approval holder, or importer from furnishing samples of beer, wine, or spirituous liquor to authorized licensees for the purpose of negotiating a sale, in accordance with regulations adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210, and in the case of spirituous liquor, any product used for samples must be purchased at retail from the board; nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board; nothing in this section shall prevent a domestic brewery, microbrewery, domestic winery, distillery, certificate of approval holder, or distributor from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150; nothing in this section shall prevent a domestic winery, certificate of approval holder, or distributor from furnishing wine without charge, subject to the taxes imposed by RCW 66.24.210, to a not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and that uses wine so furnished solely for such educational purposes or a domestic winery, or an out-of-state certificate of approval holder, from furnishing wine without charge or a domestic brewery, or an out-of-state certificate of approval holder, from furnishing beer without charge, subject to the taxes imposed by RCW 66.24.210 or 66.24.290, or a domestic distiller licensed under RCW 66.24.140 or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310, from furnishing spirits without charge, to a nonprofit charitable corporation or association exempt from taxation under section 501(c)(3) or (6) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3) or (6)) for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section shall prevent a domestic brewery or microbrewery from serving beer without charge, on the brewery premises; nothing in this section shall prevent donations of wine for the purposes of RCW 66.12.180; nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises; nothing in this section shall prevent a craft distillery from serving spirits without charge, on the distillery premises subject to RCW 66.24.145; nothing in this section shall prevent a winery or microbrewery from serving samples at a farmers market under section 1, chapter 62, Laws of 2011 and nothing in this section prohibits spirits sampling under chapter 186, Laws of 2011. [2011 c 186 § 4; 2011 c 119 § 207; 2011 c 62 § 4; 2009 c 373 § 8. Prior: 2008 c 94 § 6; 2008 c 41 § 12; 2004 c 160 § 11; 2000 c 179 § 1; prior: 1998 c 256 § 1; 1998 c 126 § 12; 1997 c 39 § 1; 1987 c 452 § 15; 1983 c

13 § 2; 1983 c 3 § 165; 1982 1st ex.s. c 26 § 2; 1981 c 182 § 2; 1975 1st ex.s. c 173 § 10; 1969 ex.s. c 21 § 7; 1935 c 174 § 4; 1933 ex.s. c 62 § 30; RRS § 7306-30.]

Reviser's note: This section was amended by 2011 c 62 § 4, 2011 c 119 § 207, and by 2011 c 186 § 4, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Spirit sampling—Liquor store pilot project—Expiration date—2011 c 186: See notes following RCW 66.08.050.

Wine tasting at farmers markets—Pilot project—Expiration date—2011 c 62: See notes following RCW 66.24.170.

Effective date—2004 c 160: See note following RCW 66.04.010.

Additional notes found at www.leg.wa.gov

66.28.040 Giving away of liquor prohibited—Exceptions. (Effective December 1, 2012.) Except as permitted by the board under RCW 66.20.010, no domestic brewery, microbrewery, distributor, distiller, domestic winery, importer, rectifier, certificate of approval holder, or other manufacturer of liquor shall, within the state of Washington, give to any person any liquor; but nothing in this section nor in RCW 66.28.305 prevents a domestic brewery, microbrewery, distributor, domestic winery, distiller, certificate of approval holder, or importer from furnishing samples of beer, wine, or spirituous liquor to authorized licensees for the purpose of negotiating a sale, in accordance with regulations adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210, and in the case of spirituous liquor, any product used for samples must be purchased at retail from the board; nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board; nothing in this section shall prevent a domestic brewery, microbrewery, domestic winery, distillery, certificate of approval holder, or distributor from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150; nothing in this section shall prevent a domestic winery, certificate of approval holder, or distributor from furnishing wine without charge, subject to the taxes imposed by RCW 66.24.210, to a not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and that uses wine so furnished solely for such educational purposes or a domestic winery, or an out-of-state certificate of approval holder, from furnishing wine without charge or a domestic brewery, or an out-of-state certificate of approval holder, from furnishing beer without charge, subject to the taxes imposed by RCW 66.24.210 or 66.24.290, or a domestic distiller licensed under RCW 66.24.140 or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310, from furnishing spirits without charge, to a nonprofit charitable corporation or association exempt from taxation under section 501(c)(3) or (6) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3) or (6)) for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section shall prevent a domestic brewery or microbrewery from serving beer without charge, on the brewery premises; nothing in this section shall prevent donations of wine for the purposes of RCW 66.12.180; nothing in this section shall prevent a domestic

winery from serving wine without charge, on the winery premises; and nothing in this section shall prevent a craft distillery from serving spirits without charge, on the distillery premises subject to RCW 66.24.145. [2011 c 119 § 207; 2009 c 373 § 8. Prior: 2008 c 94 § 6; 2008 c 41 § 12; 2004 c 160 § 11; 2000 c 179 § 1; prior: 1998 c 256 § 1; 1998 c 126 § 12; 1997 c 39 § 1; 1987 c 452 § 15; 1983 c 13 § 2; 1983 c 3 § 165; 1982 1st ex.s. c 26 § 2; 1981 c 182 § 2; 1975 1st ex.s. c 173 § 10; 1969 ex.s. c 21 § 7; 1935 c 174 § 4; 1933 ex.s. c 62 § 30; RRS § 7306-30.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Additional notes found at www.leg.wa.gov

66.28.042 Providing food and beverages for business meetings permitted. A liquor manufacturer, importer, authorized representative holding a certificate of approval, or distributor may provide to licensed retailers and their employees food and beverages for consumption at a meeting at which the primary purpose is the discussion of business, and may provide local ground transportation to and from such meetings. The value of the food, beverage, or transportation provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.305, nor shall it be considered the giving away of liquor within the meaning of RCW 66.28.040. The board may adopt rules for the implementation of this section. [2011 c 119 § 208; 2004 c 160 § 12; 1990 c 125 § 1.]

Effective date—2004 c 160: See note following RCW 66.04.010.

66.28.043 Providing food, beverages, transportation, and admission to events permitted. A liquor manufacturer, importer, authorized representative holding a certificate of approval, or distributor may provide to licensed retailers and their employees tickets or admission fees for athletic events or other forms of entertainment occurring within the state of Washington, if the manufacturer, importer, distributor, authorized representative holding a certificate of approval, or any of their employees accompanies the licensed retailer or its employees to the event. A liquor manufacturer, importer, authorized representative holding a certificate of approval, or distributor may also provide to licensed retailers and their employees food and beverages for consumption at such events, and local ground transportation to and from activities allowed under this section. The value of the food, beverage, transportation, or admission to events provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.305, nor shall it be considered the giving away of liquor within the meaning of RCW 66.28.040. The board may adopt rules for the implementation of this section. [2011 c 119 § 209; 2004 c 160 § 13; 1990 c 125 § 2.]

Effective date—2004 c 160: See note following RCW 66.04.010.

66.28.155 Breweries, microbreweries, wineries, distilleries, distributors, certificate of approval holders, and agents authorized to conduct educational activities on licensed premises of retailer. A domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent may conduct educational activities or provide product information to the con-

sumer on the licensed premises of a retailer. Information on the subject of wine, beer, or spirituous liquor, including but not limited to, the history, nature, quality, and characteristics of a wine, beer, or spirituous liquor, methods of harvest, production, storage, handling, and distribution of a wine, beer, or spirituous liquor, and the general development of the wine, beer, and spirituous liquor industry may be provided by a domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent to the public on the licensed premises of a retailer. The retailer requesting such activity shall attempt to schedule a series of brewery, winery, authorized representative, or distillery and distributor appearances in an effort to equitably represent the industries. Nothing in this section permits a domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent to receive compensation or financial benefit from the educational activities or product information presented on the licensed premises of a retailer. The promotional value of such educational activities or product information shall not be considered advancement of moneys or of moneys' worth within the meaning of RCW 66.28.305. [2011 c 119 § 210; 2004 c 160 § 15; 1997 c 39 § 3; 1984 c 196 § 1.]

Effective date—2004 c 160: See note following RCW 66.04.010.

66.28.190 Sales of nonliquor food and food ingredients. RCW 66.28.305 notwithstanding, persons licensed under RCW 66.24.200 as wine distributors and persons licensed under RCW 66.24.250 as beer distributors may sell at wholesale nonliquor food and food ingredients on thirty-day credit terms to persons licensed as retailers under this title, but complete and separate accounting records shall be maintained on all sales of nonliquor food and food ingredients to ensure that such persons are in compliance with RCW 66.28.305.

For the purpose of this section, "nonliquor food and food ingredients" includes all food and food ingredients for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 2004. [2011 c 119 § 211; 2003 c 168 § 305; 1997 c 321 § 52; 1988 c 50 § 1.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Additional notes found at www.leg.wa.gov

66.28.290 Three-tier system—Direct or indirect interests between industry members, affiliates, and retailers. (1) Notwithstanding any prohibitions and restrictions contained in this title, it shall be lawful for an industry member or affiliate to have a direct or indirect financial interest in another industry member or a retailer, and for a retailer or affiliate to have a direct or indirect financial interest in an industry member unless such interest has resulted or is more likely than not to result in undue influence over the retailer or the industry member or has resulted or is more likely than not to result in an adverse impact on public health and safety. The structure of any such financial interest must be consistent with subsection (2) of this section.

(2) Subject to subsection (1) of this section and except as provided in RCW 66.28.295:

(a) An industry member in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed pursuant to RCW 66.24.320, 66.24.330, 66.24.350, 66.24.360, 66.24.371, 66.24.380, 66.24.395, 66.24.400, 66.24.425, 66.24.452, 66.24.495, 66.24.540, 66.24.550, 66.24.570, 66.24.580, 66.24.590, 66.24.600, and 66.24.610, but may not have such a license issued in its name; and

(b) A retailer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval pursuant to RCW 66.24.140, 66.24.170, 66.24.206, 66.24.240, 66.24.244, 66.24.270(2), 66.24.200, or 66.24.250, but may not have such a license or certificate of approval issued in its name; and

(c) A supplier in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed as a distributor or importer under this title, but such supplier may not have a license as a distributor or importer issued in its own name; and

(d) A distributor or importer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval as a supplier under this title, but such distributor or importer may not have a license or certificate of approval as a supplier issued in its own name. [2011 c 325 § 6; 2011 c 119 § 202; 2009 c 506 § 3.]

Reviser's note: This section was amended by 2011 c 119 § 202 and by 2011 c 325 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

66.28.295 Three-tier system—Direct or indirect interests—Allowed activities. Nothing in RCW 66.28.290 shall prohibit:

(1) A licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and at one additional off-site retail only location.

(2) A domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(3) A microbrewery holding a beer and/or wine restaurant license under RCW 66.24.320 from holding the same privileges and endorsements attached to the beer and/or wine restaurant license.

(4) A licensed craft distillery from selling spirits of its own production under RCW 66.24.145.

(5) A licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spir-

its, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(6) A microbrewery holding a spirits, beer, and wine restaurant license under RCW 66.24.420 from holding the same privileges and endorsements attached to the spirits, beer, and wine restaurant license.

(7) A brewery or microbrewery holding a spirits, beer, and wine restaurant license or a beer and/or wine license under chapter 66.24 RCW operated on the premises of the brewery or microbrewery from holding a second retail only license at a location separate from the premises of the brewery or microbrewery.

(8) Retail licensees with a caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from operating on a domestic winery premises.

(9) An organization qualifying under RCW 66.24.375 formed for the purpose of constructing and operating a facility to promote Washington wines from holding retail licenses on the facility property or leasing all or any portion of such facility property to a retail licensee on the facility property if the members of the board of directors or officers of the board for the organization include officers, directors, owners, or employees of a licensed domestic winery. Financing for the construction of the facility must include both public and private money.

(10) A bona fide charitable nonprofit society or association registered under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code, or a local wine industry association registered under Title 26 U.S.C. Sec. 501(c)(6) of the federal internal revenue code as it existed on July 22, 2007, and having an officer, director, owner, or employee of a licensed domestic winery or a wine certificate of approval holder on its board of directors from holding a special occasion license under RCW 66.24.380.

(11) A person licensed pursuant to RCW 66.24.170, 66.24.240, or 66.24.244 from exercising the privileges of distributing and selling at retail such person's own production or from exercising any other right or privilege that attaches to such license.

(12) A person holding a certificate of approval pursuant to RCW 66.24.206 from obtaining an endorsement to act as a distributor of their own product or from shipping their own product directly to consumers as authorized by RCW 66.20.360.

(13) A person holding a wine shipper's permit pursuant to RCW 66.20.375 from shipping their own product directly to consumers.

(14) A person holding a certificate of approval pursuant to RCW 66.24.270(2) from obtaining an endorsement to act as a distributor of their own product.

(15) A domestic winery and a restaurant licensed under RCW 66.24.320 or 66.24.400 from entering an arrangement to waive a corkage fee. [2011 c 66 § 2; 2009 c 506 § 4.]

Finding—Intent—2011 c 66: "The legislature finds that some restaurants allow patrons to bring bottles of wine to the restaurant so long as restaurant personnel open and serve the beverage. In these cases, the restau-

rants often charge a fee known as a corkage fee. The legislature supports activities in the free market that facilitate local businesses in selling their products. One of the methods restaurants and wineries have found to be mutually beneficial is a waiver of corkage fees for local businesses. The legislature intends to allow wineries and restaurants the ability to make agreements as to whether to charge a corkage fee without restriction or regulation under the tied-house laws." [2011 c 66 § 1.]

66.28.310 Three-tier system—Promotional items.

(1)(a) Nothing in RCW 66.28.305 prohibits an industry member from providing retailers branded promotional items which are of nominal value, singly or in the aggregate. Such items include but are not limited to: Trays, lighters, blotters, postcards, pencils, coasters, menu cards, meal checks, napkins, clocks, mugs, glasses, bottles or can openers, corkscrews, matches, printed recipes, shirts, hats, visors, and other similar items. Branded promotional items:

- (i) Must be used exclusively by the retailer or its employees in a manner consistent with its license;
- (ii) Must bear imprinted advertising matter of the industry member only, except imprinted advertising matter of the industry member can include the logo of a professional sports team which the industry member is licensed to use;
- (iii) May be provided by industry members only to retailers and their employees and may not be provided by or through retailers or their employees to retail customers; and
- (iv) May not be targeted to or appeal principally to youth.

(b) An industry member is not obligated to provide any such branded promotional items, and a retailer may not require an industry member to provide such branded promotional items as a condition for selling any alcohol to the retailer.

(c) Any industry member or retailer or any other person asserting that the provision of branded promotional items as allowed in (a) of this subsection has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria in (a) of this subsection may file a complaint with the board. Upon receipt of a complaint the board may conduct such investigation as it deems appropriate in the circumstances. If the investigation reveals the provision of branded promotional items has resulted in or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an adverse impact on public health and safety or is otherwise inconsistent with (a) of this subsection the board may issue an administrative violation notice to the industry member, to the retailer, or both. The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.

(2) Nothing in RCW 66.28.305 prohibits:

- (a) An industry member from providing to a special occasion licensee and a special occasion licensee from receiving services for:
 - (i) Installation of draft beer dispensing equipment or advertising;
 - (ii) Advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event; or
 - (iii) Pouring or dispensing of spirits by a licensed domestic distiller or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310; or

(b) Special occasion licensees from paying for beer or wine immediately following the end of the special occasion event; or

(c) Wineries or breweries that are participating in a special occasion event from paying reasonable booth fees to the special occasion licensee.

(3) Nothing in RCW 66.28.305 prohibits industry members from performing, and retailers from accepting the service of building, rotating, and restocking displays and stockroom inventories; rotating and rearranging can and bottle displays of their own products; providing point of sale material and brand signs; pricing case goods of their own brands; and performing such similar business services consistent with board rules, or personal services as described in subsection (5) of this section.

(4) Nothing in RCW 66.28.305 prohibits:

- (a) Industry members from listing on their internet web sites information related to retailers who sell or promote their products, including direct links to the retailers' internet web sites; and
- (b) Retailers from listing on their internet web sites information related to industry members whose products those retailers sell or promote, including direct links to the industry members' web sites; or

(c) Industry members and retailers from producing, jointly or together with regional, state, or local industry associations, brochures and materials promoting tourism in Washington state which contain information regarding retail licensees, industry members, and their products.

(5) Nothing in RCW 66.28.305 prohibits the performance of personal services offered from time to time by a domestic winery or certificate of approval holder to retailers when the personal services are (a) conducted at a licensed premises, and (b) intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation and pouring, bottle signing events, and other similar informational or educational activities at the premises of a retailer holding a spirits, beer, and wine restaurant license, a wine and/or beer restaurant license, a specialty wine shop license, a special occasion license, a grocery store license with a tasting endorsement, or a private club license. A domestic winery or certificate of approval holder is not obligated to perform any such personal services, and a retail licensee may not require a domestic winery or certificate of approval holder to conduct any personal service as a condition for selling any alcohol to the retail licensee, or as a condition for including any product of the domestic winery or certificate of approval holder in any tasting conducted by the licensee. Except as provided in RCW 66.28.150, the cost of sampling may not be borne, directly or indirectly, by any domestic winery or certificate of approval holder or any distributor. Nothing in this section prohibits wineries, certificate of approval holders, and retail licensees from identifying the producers on private labels authorized under RCW 66.24.400, 66.24.425, and 66.24.450.

(6) Nothing in RCW 66.28.305 prohibits an industry member from entering into an arrangement with any holder of a sports entertainment facility license or an affiliated business for brand advertising at the licensed facility or promot-

ing events held at the sports entertainment facility as authorized under RCW 66.24.570.

(7) Nothing in RCW 66.28.305 prohibits the performance of personal services offered from time to time by a domestic brewery, microbrewery, or beer certificate of approval holder to grocery store licensees with a tasting endorsement when the personal services are (a) conducted at a licensed premises in conjunction with a tasting event, and (b) intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation and pouring, bottle signing events, and other similar informational or educational activities. A domestic brewery, microbrewery, or beer certificate of approval holder is not obligated to perform any such personal services, and a grocery store licensee may not require the performance of any personal service as a condition for including any product in any tasting conducted by the licensee.

(8) Nothing in RCW 66.28.305 prohibits an arrangement between a domestic winery and a restaurant licensed under RCW 66.24.320 or 66.24.400 to waive a corkage fee.

(9) Nothing in this section prohibits professional sports teams who hold a retail liquor license or their agents from accepting bona fide liquor advertising from manufacturers, importers, distributors, or their agents for use in the sporting arena. Professional sports teams who hold a retail liquor license or their agents may license the manufacturer, importer, distributor, or their agents to use the name and trademarks of the professional sports team in their advertising and promotions, under the following conditions:

(a) Such advertising must be paid for by said manufacturer, importer, distributor, or their agent at the published advertising rate or at a reasonable fair market value.

(b) Such advertising may carry with it no express or implied offer on the part of the manufacturer, importer, distributor, or their agent, or promise on the part of the retail licensee whose operation is directly or indirectly part of the sporting arena, to stock or list any particular brand of liquor to the total or partial exclusion of any other brand. [2011 c 119 § 101; 2011 c 66 § 3. Prior: 2010 c 290 § 3; 2010 c 141 § 4; 2009 c 506 § 7.]

Reviser's note: This section was amended by 2011 c 66 § 3 and by 2011 c 119 § 101, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2011 c 66: See note following RCW 66.28.295.

Chapter 66.44 RCW

ENFORCEMENT—PENALTIES

Sections

66.44.120 Unlawful use of seal.
66.44.180 General penalties—Jurisdiction for violations.

66.44.120 Unlawful use of seal. (1) No person other than an employee of the board shall keep or have in his or her possession any official seal prescribed under this title, unless the same is attached to a package which has been purchased from a liquor store or contract liquor store; nor shall any person keep or have in his or her possession any design in imitation of any official seal prescribed under this title, or calcu-

lated to deceive by its resemblance thereto, or any paper upon which any design in imitation thereof, or calculated to deceive as aforesaid, is stamped, engraved, lithographed, printed, or otherwise marked.

(2)(a) Except as provided in (b) of this subsection, every person who willfully violates this section is guilty of a gross misdemeanor and shall be liable on conviction thereof for a first offense to imprisonment in the county jail for a period of not less than three months nor more than six months, without the option of the payment of a fine, and for a second offense, to imprisonment in the county jail for not less than six months nor more than three hundred sixty-four days, without the option of the payment of a fine.

(b) A third or subsequent offense is a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than two years. [2011 c 96 § 46; 2005 c 151 § 11; 2003 c 53 § 299; 1992 c 7 § 42; 1933 ex.s. c 62 § 47; RRS § 7306-47.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

66.44.180 General penalties—Jurisdiction for violations. (1) Every person guilty of a violation of this title for which no penalty has been specifically provided:

(a) For a first offense, is guilty of a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than two months, or both;

(b) For a second offense, is guilty of a gross misdemeanor punishable by imprisonment for not more than six months; and

(c) For a third or subsequent offense, is guilty of a gross misdemeanor punishable by imprisonment for up to three hundred sixty-four days.

(2) If the offender convicted of an offense referred to in this section is a corporation, it shall for a first offense be liable to a penalty of not more than five thousand dollars, and for a second or subsequent offense to a penalty of not more than ten thousand dollars, or to forfeiture of its corporate license, or both.

(3) Every district judge and municipal judge shall have concurrent jurisdiction with superior court judges of the state of Washington of all violations of the provisions of this title and may impose any punishment provided therefor. [2011 c 96 § 47; 2003 c 53 § 300; 1987 c 202 § 225; 1981 1st ex.s. c 5 § 22; 1935 c 174 § 16; 1933 ex.s. c 62 § 93; RRS § 7306-93.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

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

Additional notes found at www.leg.wa.gov

Chapter 66.70 RCW

LIQUOR WAREHOUSING AND DISTRIBUTION

Sections

66.70.010 Definitions.
66.70.020 Findings.
66.70.030 Competitive procurement.
66.70.040 Contract.

- 66.70.050 Liquor distribution advisory committee.
 66.70.060 Exemption—Purchasing services by contract criteria.

66.70.010 Definitions. For the purposes of this chapter, unless the context clearly requires otherwise:

- (1) "Liquor" has the same meaning as provided in RCW 66.04.010.
- (2) "Spirits" has the same meaning as provided in RCW 66.04.010.
- (3) "State liquor stores" includes "stores" and "contract liquor stores" as those terms are defined in RCW 66.04.010. [2011 1st sp.s. c 45 § 6.]

Effective date—2011 1st sp.s. c 45: See note following RCW 66.70.030.

66.70.020 Findings. The legislature finds that it is in the public interest to seek revenue opportunities through leasing and modernizing the state's liquor warehousing and distribution facilities and related operations. The legislature finds that it is also in the public interest to conduct a competitive process to select a private sector lessee for this purpose. Nothing in chapter 45, Laws of 2011 1st sp. sess. is intended to affect the private distribution or sale of beer or wine, the operation by the state of state liquor stores, or the authority of the Washington state liquor control board to oversee, manage, and enforce state liquor sales. [2011 1st sp.s. c 45 § 1.]

Effective date—2011 1st sp.s. c 45: See note following RCW 66.70.030.

66.70.030 Competitive procurement. (1) Within one hundred twenty days after June 15, 2011, the office of financial management, in consultation with the Washington state liquor control board and the liquor distribution advisory committee, must establish and conduct a competitive process for the selection of a private sector entity to lease and modernize the state's liquor warehousing and distribution facilities and related operations. The competitive process must assume that the Washington state liquor control board retains its existing exclusive retail spirits sales business, be designed to encourage the participation of private sector entities with previous wholesale distribution experience with a public partner excluding licensees engaged in the manufacture of liquor or the retail sale of liquor in the state, and be designed to encourage competition among such entities.

(2)(a) To implement the competitive process required under subsection (1) of this section, the office of financial management must, after consultation with the Washington state liquor control board and the liquor distribution advisory committee, request proposals for:

- (i) The lease of or other contract for the entire state liquor warehousing and distribution business, including the facilities, operations, and other assets associated with the warehousing of liquor and the distribution of liquor; and
- (ii) The exclusive right to warehouse spirits and to distribute spirits in the state.

(b) The request for proposals must include without limitation:

- (i) A requirement that proposals demonstrate to the satisfaction of the office of financial management relevant previous experience as well as the financial capacity to perform obligations under the contract;

- (ii) A requirement that proposals demonstrate, to the satisfaction of the office of financial management, a net positive financial benefit to the state and local government over the term of the proposed lease or contract taking into account: An initial up-front payment to the state during the 2011-2013 biennium; proposed profit-sharing payments to the state; projected business and occupation and liquor tax revenues; and changes to retail profits generated as a result of the lease or contract. The office of financial management, in consultation with the liquor distribution advisory committee and interested stakeholders, must develop a definition and criteria on how to determine "positive financial benefit to the state and local government";

- (iii) A requirement that the prevailing proponent deposit into an escrow account, within fifteen business days after the announcement of selection of that proposal and definitive resolution of any appeals to such selection, the full amount of the initial up-front payment offered in the proponent's response to the request for proposals, pending and subject to successful negotiation of a mutually acceptable lease or other contract;

- (iv) A requirement that proposals include a quantified commitment to invest in capital improvements to warehousing and distribution facilities and a mechanism to ensure that such investments are timely made, consistent with requirements in a mutually acceptable lease or contract;

- (v) A requirement that proposals include a commitment to assume responsibility for the costs associated with the operation of liquor warehousing and distribution;

- (vi) A requirement that proposals demonstrate to the satisfaction of the office of financial management a commitment to improved distribution including without limitation logistics and delivery improvements to improve margins, ensure regularity of deliveries to state or contract liquor stores to reduce out-of-stock problems, improve service to stores located in geographically remote areas of the state, expand liquor selection, provide for bottle rather than minimum case purchasing and stocking of state or contract liquor stores, if practicable, and enable electronic funds transfer of payments;

- (vii) A requirement that proposals include a commitment to offer employment to the state employees currently in positions relating to the wholesale distribution of liquor and to recognize and bargain with any existing bargaining representative of such employees with respect to terms and conditions of employment;

- (viii) A requirement that the variety of brands and types of liquor available to licensees, contract liquor stores, and state liquor stores must be equal to or greater than what is being distributed by the Washington state liquor control board; and

- (ix) Measurable standards for the performance of the contract.

(c) Prior to conducting the competitive process outlined in this section, the request for proposals developed by the office of financial management must be reviewed by the house and senate fiscal committees. Opportunity for public comment regarding the request for proposal must be provided. The review must be completed within fourteen days of the office of financial management providing the request for proposals to the house and senate fiscal committees.

(d) The office of financial management must publicly disclose an analysis of the fiscal impacts to state and local government of each of the offers in the procurement process.

(e) After consultation with the Washington state liquor control board, local government, and the liquor distribution advisory committee, the office of financial management is authorized to recommend to the Washington state liquor control board the proposal that in the determination of the office of financial management best meets the criteria required under this subsection (2), in the best interests of the state. If, in the determination of the office of financial management, there is no proposal that meets the best interest of the state, the office of financial management must notify the Washington state liquor control board to not accept any of the proposals.

(3) Any challenge to or protest of the recommendation of the office of financial management and the acceptance by the liquor control board of the recommended proposal must be filed by a respondent that submitted a proposal with the office of financial management within five days after such recommendation and acceptance. The grounds for such challenge or protest are limited to claims that the recommendation and acceptance were arbitrary and capricious. The office of financial management must, within five days, render its decision on the protest. The respondent that filed the protest may, within five days after such decision, appeal to the superior court of Thurston county by petition setting forth objections to the decision. A copy of the petition on appeal together with a notice that an appeal has been taken must be served upon the secretary of state, the attorney general, the office of financial management, the liquor control board, and the respondent that submitted the recommended and accepted proposal. The court must accord first priority to examining the objections, may hear arguments, and must, within ten days, render its decision. The decision of the superior court is final. [2011 1st sp.s. c 45 § 2.]

Effective date—2011 1st sp.s. c 45: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 2011]." [2011 1st sp.s. c 45 § 10.]

66.70.040 Contract. (1) Within sixty days after the recommendation of a proposal under RCW 66.70.030, the Washington state liquor control board may accept that proposal and enter into a long-term contract with that entity for the lease of the business, facilities, and assets associated with the warehousing and distribution of liquor in the state. The contract must grant the exclusive right to distribute spirits in the state for the period of the contract. The contract must include enforceable performance standards and minimum financial returns to the state. The contract must provide a provision that allows the state to terminate the contract should specific performance standards or financial returns to the state not be realized. The contract must provide for a reasonable termination notification process as well as financial terms of termination should termination of contract take place.

(2) If the state receives an up-front payment of one hundred million dollars or more as a result of accepting a proposal from the procurement process in RCW 66.70.030, the contract must provide that the private entity place the up-

front payment into irrevocable trust with the state being the beneficiary. The contract must provide that the trust be created in a manner that the state may not receive more than one-sixth of the up-front payment placed into the trust in any fiscal year.

(3) The contract must contain provisions that the Washington state liquor control board maintains the exclusive authority to select products and determine which products will be carried in state and contract liquor stores.

(4) The contract must contain provisions that the Washington state liquor control board must set the prices of liquor for sales in state and contract liquor stores as well as sales to licensees.

(5) The contract must contain a provision that any financial deficiencies or losses of the private entity contracting for the warehousing and distribution of liquor in the state must not be compensated for in any way by the state, contract [liquor] stores, consumers, or licensees. [2011 1st sp.s. c 45 § 3.]

Effective date—2011 1st sp.s. c 45: See note following RCW 66.70.030.

66.70.050 Liquor distribution advisory committee.

(1) The director of the office of financial management must appoint a liquor distribution advisory committee. The purpose of the committee is to assist and make recommendations to the office of financial management and the Washington state liquor control board regarding the provisions of chapter 45, Laws of 2011 1st sp. sess. including, but not limited to, setting requirements for the competitive procurement process, selection of a private entity or recommendation that no entity be selected, and creating the terms of a contract with a selected private entity. The advisory committee's recommendations and assistance to the office of financial management and Washington state liquor control board in regards to the provisions of chapter 45, Laws of 2011 1st sp. sess. are advisory in nature and do not prohibit the office of financial management and Washington state liquor control board from performing their duties under chapter 45, Laws of 2011 1st sp. sess. as they deem fit.

(2) The liquor distribution advisory committee is composed of the Washington state treasurer or his or her designee, a designee from each of the two largest caucuses of the senate determined by the leaders of each caucus, and a designee from each of the two largest caucuses of the house of representatives determined by the leaders of each caucus. [2011 1st sp.s. c 45 § 4.]

Effective date—2011 1st sp.s. c 45: See note following RCW 66.70.030.

66.70.060 Exemption—Purchasing services by contract criteria. Contracting for services under this chapter is not subject to the processes of RCW 41.06.142 (1), (4), and (5). [2011 1st sp.s. c 45 § 5.]

Effective date—2011 1st sp.s. c 45: See note following RCW 66.70.030.

Title 67

SPORTS AND RECREATION—
CONVENTION FACILITIES

Chapters

- 67.08** Boxing, martial arts, and wrestling.
67.16 Horse racing.
67.17 Live horse racing compact.
67.28 Public stadium, convention, arts, and tourism facilities.
67.70 State lottery.

Chapter 67.08 RCW

BOXING, MARTIAL ARTS, AND WRESTLING

Sections

- 67.08.320 Military training or experience.

67.08.320 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 21.]

Chapter 67.16 RCW

HORSE RACING

Sections

- 67.16.012 Washington horse racing commission—Creation—Terms—Vacancies—Bonds—Oaths.
 67.16.105 Gross receipts—Commission's percentage—Distributions.
 67.16.280 Washington horse racing commission operating account.

67.16.012 Washington horse racing commission—Creation—Terms—Vacancies—Bonds—Oaths. There is hereby created the Washington horse racing commission, to consist of three commissioners, appointed by the governor and confirmed by the senate. The commissioners shall be citizens, residents, and qualified electors of the state of Washington, one of whom shall be a breeder of race horses and shall be of at least one year's standing. The terms of the members shall be six years. Each member shall hold office until his or her successor is appointed and qualified. Vacancies in the office of commissioner shall be filled by appointment to be made by the governor for the unexpired term. Any commissioner may be removed at any time at the pleasure of the governor. Before entering upon the duties of his or her office, each commissioner shall enter into a surety company bond, to be approved by the governor and attorney general, payable to the state of Washington, in the penal sum of five thousand dollars, conditioned upon the faithful performance of his or her duties and the correct accounting and payment of all sums received and coming within his or her control under this chapter, and in addition thereto each commissioner shall take and subscribe to an oath of office of the same form as that prescribed by law for elective state officers. [2011 1st sp.s. c 21 § 13; 1998 c 345 § 4; 1987 c 453 § 2; 1973 1st ex.s. c 216 § 1; 1969 ex.s. c 233 § 1; 1933 c 55 § 2; RRS § 8312-2. Formerly RCW 43.50.010.]

[2011 RCW Supp—page 1324]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Additional notes found at www.leg.wa.gov

67.16.105 Gross receipts—Commission's percentage—Distributions. (1) Licensees of race meets that are nonprofit in nature and are of ten days or less are exempt from payment of a parimutuel tax.

(2) Licensees that do not fall under subsection (1) of this section must withhold and pay to the commission daily for each authorized day of parimutuel wagering the following applicable percentage of all daily gross receipts from its in-state parimutuel machines:

(a) If the gross receipts of all its in-state parimutuel machines are more than fifty million dollars in the previous calendar year, the licensee must withhold and pay to the commission daily 1.30 percent of the daily gross receipts; and

(b) If the gross receipts of all its in-state parimutuel machines are fifty million dollars or less in the previous calendar year, the licensee must withhold and pay to the commission daily 1.803 percent of the daily gross receipts.

(3)(a) In addition to those amounts in subsection (2) of this section, a licensee must forward one-tenth of one percent of the daily gross receipts of all its in-state parimutuel machines to the commission for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but the percentage may not be charged against the licensee.

(b) Payments to nonprofit race meets under this subsection must be distributed on a per-race-day basis and used only for purses at race tracks that have been operating under RCW 67.16.130 and subsection (1) of this section in 2010 or for the five consecutive years immediately preceding the year of payment.

(c) As provided in this subsection, the commission must distribute funds up to fifteen thousand eight hundred dollars per race day from funds generated under this subsection (3).

(4) Beginning July 1, 1999, at the conclusion of each authorized race meet, the commission must calculate the mathematical average daily gross receipts of parimutuel wagering that is conducted only at the physical location of the live race meet at those race meets of licensees with gross receipts of all their in-state parimutuel machines of more than fifty million dollars. Such calculation shall include only the gross parimutuel receipts from wagering occurring on live racing dates, including live racing receipts and receipts derived from one simulcast race card that is conducted only at the physical location of the live racing meet, which, for the purposes of this subsection, is "the handle." If the calculation exceeds eight hundred eighty-six thousand dollars, the licensee must within ten days of receipt of written notification by the commission forward to the commission a sum equal to the product obtained by multiplying 0.6 percent by the handle. Sums collected by the commission under this subsection must be forwarded on the next business day following receipt thereof to the state treasurer to be deposited in the fair fund created in RCW 15.76.115. [2011 c 12 § 1; 2010 c 39 § 1; 2004 c 246 § 7; 2003 1st sp.s. c 27 § 1; 1998 c 345 § 6; 1997 c 87 § 3; 1995 c 173 § 2; 1994 c 159 § 2; 1993 c 170 § 2; 1991 c 270 § 6; 1987 c 347 § 4; 1985 c 146 § 7; 1982 c 32 § 3; 1979 c 31 § 6.]

Effective date—2011 c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 5, 2011]." [2011 c 12 § 3.]

Effective date—2004 c 246: See note following RCW 67.16.270.

Effective date—2003 1st sp.s. c 27: "This act takes effect January 1, 2004." [2003 1st sp.s. c 27 § 2.]

Findings—Purpose—Report by joint legislative audit and review committee—Severability—Effective date—1997 c 87: See notes following RCW 67.16.200.

Intent—1995 c 173: "It is the intent of the legislature that one-half of the money being paid into the Washington thoroughbred racing fund continue to be directed to enhanced purses, and that one-half of the money being paid into the fund continue to be deposited into an escrow or trust account and used for the construction of a new thoroughbred racing facility in western Washington." [1995 c 173 § 1.]

Intent—1994 c 159: "It is the intent of the legislature to terminate payments into the Washington thoroughbred racing fund from licensees of non-profit race meets from March 30, 1994, until June 1, 1995, and to provide that one-half of moneys that otherwise would have been paid into the fund be directed to enhanced purses and one-half of moneys be deposited in an escrow or trust account and used solely for construction of a new thoroughbred race track facility in western Washington." [1994 c 159 § 1.]

Intent—1993 c 170: "It is the intent of the legislature that one-half of those moneys that would otherwise have been paid into the Washington thoroughbred racing fund be retained for the purpose of enhancing purses, excluding stakes purses, until that time as a permanent thoroughbred racing facility is built and operating in western Washington. It is recognized by the Washington legislature that the enhancement in purses provided in this legislation will not directly benefit all race tracks in Washington. It is the legislature's intent that the horse racing commission work with the horse racing community to ensure that this opportunity for increased purses will not inadvertently injure horse racing at tracks not directly benefiting from this legislation." [1993 c 170 § 1.]

Additional notes found at www.leg.wa.gov

67.16.280 Washington horse racing commission operating account. (1) The Washington horse racing commission operating account is created in the custody of the state treasurer. All receipts collected by the commission under RCW 67.16.105(2) must be deposited into the account. The commission has the authority to receive such gifts, grants, and endowments from public or private sources as may be made from time to time in trust or otherwise for the use and purpose of regulating or supporting nonprofit race meets as set forth in RCW 67.16.130 and 67.16.105(1); such gifts, grants, and endowments must also be deposited into the account and expended according to the terms of such gift, grant, or endowment. Moneys in the account may be spent only after appropriation. Except as provided in subsection (2) of this section, expenditures from the account may be used only for operating expenses of the commission. Investment earnings from the account will be retained in the Washington horse racing commission operating account, pursuant to RCW 43.79A.040.

(2) In order to provide funding in support of the legislative findings in RCW 67.16.101 (1) through (3), and to provide additional necessary support to the nonprofit race meets beyond the funding provided by RCW 67.16.101(4) and 67.16.102(2), the commission is authorized to spend up to three hundred thousand dollars per fiscal year from its operating account for the purpose of developing the equine industry, maintaining and upgrading racing facilities, and assisting equine health research. When determining how to allocate the funds available for these purposes, the commission must give first consideration to uses that regulate and assist the

nonprofit race meets and equine health research. These expenditures may occur only when sufficient funds remain for the continued operations of the horse racing commission. [2011 c 12 § 2; 2006 c 174 § 1; 2004 c 246 § 3.]

Effective date—2011 c 12: See note following RCW 67.16.105.

Effective date—2004 c 246: See note following RCW 67.16.270.

Chapter 67.17 RCW

LIVE HORSE RACING COMPACT

Sections

67.17.050 Creation of compact committee.

67.17.050 Creation of compact committee. (1) There is created an interstate governmental entity to be known as the "compact committee" which shall be comprised of one official from the racing commission or its equivalent in each party state who shall be appointed, serve, and be subject to removal in accordance with the laws of the party state he or she represents. Under the laws of his or her party state, each official shall have the assistance of his or her state's racing commission or the equivalent thereof in considering issues related to licensing of participants in live racing and in fulfilling his or her responsibilities as the representative from his or her state to the compact committee. If an official is unable to perform any duty in connection with the powers and duties of the compact committee, the racing commission or equivalent thereof from his or her state shall designate another of its members as an alternate who shall serve in his or her place and represent the party state as its official on the compact committee until that racing commission or equivalent thereof determines that the original representative official is able once again to perform his or her duties as that party state's representative official on the compact committee. The designation of an alternate shall be communicated by the affected state's racing commission or equivalent thereof to the compact committee as the committee's bylaws may provide.

(2) The horse racing commission shall appoint the official to represent the state of Washington on the compact committee for a term of four years. No official may serve more than three consecutive terms. A vacancy shall be filled by the horse racing commission for the unexpired term. [2011 1st sp.s. c 21 § 29; 2001 c 18 § 6.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Chapter 67.28 RCW

PUBLIC STADIUM, CONVENTION, ARTS, AND TOURISM FACILITIES

Sections

67.28.180 Lodging tax authorized—Conditions.

67.28.180 Lodging tax authorized—Conditions. (1) Subject to the conditions set forth in subsections (2) and (3) of this section, the legislative body of any county or any city, is authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW.

(2) Any levy authorized by this section is subject to the following:

(a) Any county ordinance or resolution adopted pursuant to this section must contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed pursuant to this section upon the same taxable event.

(b)(i) In the event that any county has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such county is exempt from the provisions of (a) of this subsection, to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160. However, so much of such pledged tax revenues, together with any investment earnings thereon, not immediately necessary for actual payment of principal and interest on such bonds may be used: (A) In any county with a population of one million five hundred thousand or more, for repayment either of limited tax levy general obligation bonds or of any county fund or account from which a loan was made, the proceeds from the bonds or loan being used to pay for constructing, installing, improving, and equipping stadium capital improvement projects, and to pay for any engineering, planning, financial, legal and professional services incident to the development of such stadium capital improvement projects, regardless of the date the debt for such capital improvement projects was or may be incurred; (B) in any county with a population of one million five hundred thousand or more, for repayment or refinancing of bonded indebtedness incurred prior to January 1, 1997, for any purpose authorized by this section or relating to stadium repairs or rehabilitation, including but not limited to the cost of settling legal claims, reimbursing operating funds, interest payments on short-term loans, and any other purpose for which such debt has been incurred if the county has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.030; or (C) in other counties, for county-owned facilities for agricultural promotion until January 1, 2009, and thereafter for any purpose authorized in this chapter.

(ii) A county is exempt under this subsection with respect to city revenue or general obligation bonds issued after April 1, 1991, only if such bonds mature before January 1, 2013. If any county located east of the crest of the Cascade mountains has levied the tax authorized by this section and has, prior to June 26, 1975, pledged the tax revenue for payment of principal and interest on city revenue or general obligation bonds, the county is exempt under this subsection with respect to revenue or general obligation bonds issued after January 1, 2007, only if the bonds mature before January 1, 2035. Such a county may only use funds under this subsection (2)(b) for constructing or improving facilities authorized under this chapter, including county-owned facilities for agricultural promotion.

(ii) As used in this subsection (2)(b), "capital improvement projects" may include, but not be limited to a stadium restaurant facility, restroom facilities, artificial turf system, seating facilities, parking facilities and scoreboard and information system adjacent to or within a county owned stadium, together with equipment, utilities, accessories and appurtenances necessary thereto. The stadium restaurant authorized by this subsection (2)(b) must be operated by a private concessionaire under a contract with the county.

(c)(i) No city within a county exempt under (b) of this subsection may levy the tax authorized by this section so long as said county is so exempt.

(ii) No city within a county with a population of one million five hundred thousand or more may levy the tax authorized by this section.

(ii) However, in the event that any city in a county described in (c)(i) or (ii) of this subsection (2) has levied the tax authorized by this section and has, prior to June 26, 1975, authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such city may levy the tax so long as the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160.

(3) Any levy authorized by this section by a county that has a population of one million five hundred thousand or more is subject to the following:

(a) Taxes collected under this section in any calendar year before 2013 in excess of five million three hundred thousand dollars may only be used as follows:

(i) Seventy percent from January 1, 2001, through December 31, 2012, for art museums, cultural museums, heritage museums, the arts, and the performing arts. Moneys spent under this subsection (3)(a)(i) must be used for the purposes of this subsection (3)(a)(i) in all parts of the county.

(ii) Thirty percent from January 1, 2001, through December 31, 2012, for the following purposes and in a manner reflecting the following order of priority: Stadium purposes as authorized under subsection (2)(b) of this section; acquisition of open space lands; youth sports activities; and tourism promotion. If all or part of the debt on the stadium is refinanced, all revenues under this subsection (3)(a)(ii) must be used to retire the debt.

(b) From January 1, 2013, through December 31, 2015, all revenues under this section shall be used to retire the debt on the stadium, until the debt on the stadium is retired. On and after the date the debt on the stadium is retired, and through December 31, 2015, all revenues under this section in a county of one million five hundred thousand or more must be deposited in the special account under (e) of this subsection.

(c) From January 1, 2016, through December 31, 2020, all revenues under this section must be deposited in the stadium and exhibition center account under RCW 43.99N.060.

(d) On and after January 1, 2021, the revenues under this section must be used as follows:

(i) At least thirty-seven and one-half percent of the revenues under this section must be deposited in the special account under (e) of this subsection.

(ii) At least thirty-seven and one-half percent of the revenues under this section must be used for nonprofit organiza-

tions or public housing authorities for affordable workforce housing within one-half of a mile of a transit station, as described under RCW 9.91.025 or for services for homeless youth.

(iii) The remainder must be used for capital or operating programs that promote tourism and attract tourists to the county.

(e) At least forty percent of the revenues distributed pursuant to (a)(i) of this subsection must be deposited in a special account. The account may only be used for the purposes of (a)(i) of this subsection.

(f) School districts and schools may not receive revenues distributed pursuant to (a)(i) of this subsection.

(g) Moneys distributed to art museums, cultural museums, heritage museums, the arts, and the performing arts, and moneys distributed for tourism promotion must be in addition to and may not be used to replace or supplant any other funding by the legislative body of the county.

(h) For the purposes of this section:

(i) "Affordable workforce housing" means housing for a single person, family, or unrelated persons living together whose income is between thirty percent and eighty percent of the median income, adjusted for household size, for the county where the housing is located; and

(ii) "Tourism promotion" includes activities intended to attract visitors for overnight stays, arts, heritage, and cultural events, and recreational, professional, and amateur sports events. Moneys allocated to tourism promotion in a county with a population of one million or more must be allocated to local public organizations and nonprofit organizations formed for the express purpose of tourism promotion in the county. Such organizations must use moneys from the taxes to promote events in all parts of the county.

(i) No taxes collected under this section may be used for the operation or maintenance of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged. Expenditures for operation or maintenance include all expenditures other than expenditures that directly result in new fixed assets or that directly increase the capacity, life span, or operating economy of existing fixed assets.

(j) No ad valorem property taxes may be used for debt service on bonds issued for a public stadium that is financed by bonds to which the tax is pledged, unless the taxes collected under this section are or are projected to be insufficient to meet debt service requirements on such bonds.

(k) If a substantial part of the operation and management of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged is performed by a nonpublic entity or if a public stadium is sold that is financed directly or indirectly by bonds to which the tax is pledged, any bonds to which the tax is pledged shall be retired. This subsection (3)(k) does not apply in respect to a public stadium under chapter 36.102 RCW transferred to, owned by, or constructed by a public facilities district under chapter 36.100 RCW or a stadium and exhibition center.

(l) The county may not lease a public stadium that is financed directly or indirectly by bonds to which the tax is pledged to, or authorize the use of the public stadium by, a professional major league sports franchise unless the sports franchise gives the right of first refusal to purchase the sports franchise, upon its sale, to local government. This subsection

(3)(l) does not apply to contracts in existence on April 1, 1986.

(4) If a court of competent jurisdiction declares any provision of subsection (3) of this section invalid, then that invalid provision is null and void and the remainder of this section is not affected. [2011 1st sp.s. c 38 § 1; 2010 1st sp.s. c 26 § 8; 2007 c 189 § 1; (2008 c 264 § 2 expired July 1, 2009); 2002 c 178 § 2; 1997 c 220 § 501 (Referendum Bill No. 48, approved June 17, 1997); 1995 1st sp.s. c 14 § 10; 1995 c 386 § 8. Prior: 1991 c 363 § 139; 1991 c 336 § 1; 1987 c 483 § 1; 1986 c 104 § 1; 1985 c 272 § 1; 1975 1st ex.s. c 225 § 1; 1973 2nd ex.s. c 34 § 5; 1970 ex.s. c 89 § 1; 1967 c 236 § 11.]

Findings—Intent—2008 c 264: "The legislature finds that locally funded heritage and arts programs build vital communities and preserve community history and culture. It further finds that within existing revenue sources, local jurisdictions should have the capability to preserve these programs in the future.

The locally funded heritage and arts program in the state's most populated county was established in 1989 using a portion of hotel-motel tax revenues. This program was structured to provide for inflation and an expanding population of the county.

In 1997, the legislature acted to assure the future of the heritage and arts program by creating an endowment fund using these same local funds. This funding mechanism has proved to be inadequate and unless immediately modified will result in a seventy-five percent reduction of funds for the program.

This act will provide a stable and predictable flow of funds to the program, provide for inflation and an expanding population, and assure the future viability of the program within existing revenue flows." [2008 c 264 § 1.]

Effective date—2008 c 264: "This act takes effect July 1, 2008." [2008 c 264 § 5.]

Retroactive application—2002 c 178: "This act applies retroactively to events occurring on and after September 1, 2001." [2002 c 178 § 6.]

Effective date—2002 c 178: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2002]." [2002 c 178 § 7.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

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

Additional notes found at www.leg.wa.gov

Chapter 67.70 RCW STATE LOTTERY

Sections

67.70.240	Use of moneys in state lottery account limited.
67.70.260	Lottery administrative account created.
67.70.500	Veteran lottery raffle—Created.

67.70.240 Use of moneys in state lottery account limited. The moneys in the state lottery account shall be used only:

(1) For the payment of prizes to the holders of winning lottery tickets or shares;

(2) For purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260;

(3) For purposes of making deposits into the education construction fund created in RCW 43.135.045 and the Wash-

ington opportunity pathways account created in RCW 28B.76.526. On and after July 1, 2010, all deposits not otherwise obligated under this section shall be placed in the Washington opportunity pathways account. Moneys in the state lottery account deposited in the Washington opportunity pathways account are included in "general state revenues" under RCW 39.42.070;

(4) For distribution to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs. Three million dollars shall be distributed under this subsection during calendar year 1996. During subsequent years, such distributions shall equal the prior year's distributions increased by four percent. Distributions under this subsection shall cease when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax under RCW 82.14.0485 is first imposed;

(5) For distribution to the stadium and exhibition center account, created in RCW 43.99N.060. Subject to the conditions of RCW 43.99N.070, six million dollars shall be distributed under this subsection during the calendar year 1998. During subsequent years, such distribution shall equal the prior year's distributions increased by four percent. No distribution may be made under this subsection after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met. Distributions under this subsection shall cease when the bonds are retired, but not later than December 31, 2020;

(6) For transfer to the veterans innovations program account. The net revenues received from the sale of the annual Veteran's Day lottery raffle conducted under RCW 67.70.500 must be deposited into the veterans innovations program account created in RCW 43.60A.185 for purposes of serving veterans and their families. For purposes under this subsection, "net revenues" means all revenues received from the sale of veteran lottery raffle tickets less the sum of the amount paid out in prizes and the actual administration expenses of the lottery solely related to the veteran lottery raffle;

(7) For the purchase and promotion of lottery games and game-related services; and

(8) For the payment of agent compensation.

The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allotments. [2011 c 352 § 3; 2010 1st sp.s. c 27 § 3. Prior: 2009 c 500 § 11; 2009 c 479 § 44; 2001 c 3 § 4 (Initiative Measure No. 728, approved November 7, 2000); 1997 c 220 § 206 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 105; 1987 c 513 § 7; 1985 c 375 § 5; 1982 2nd ex.s. c 7 § 24.]

Intent—2011 c 352: See note following RCW 67.70.500.

Findings—Intent—2010 1st sp.s. c 27: See note following RCW 28B.76.526.

Effective date—2009 c 500: See note following RCW 39.42.070.

Effective date—2009 c 479: See note following RCW 2.56.030.

Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728): See notes following RCW 28A.505.210.

[2011 RCW Supp—page 1328]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

State contribution for baseball stadium limited: RCW 82.14.0486.

Additional notes found at www.leg.wa.gov

67.70.260 Lottery administrative account created.

There is hereby created the lottery administrative account in the state treasury. The account shall be managed, controlled, and maintained by the director. The legislature may appropriate from the account for the payment of costs incurred in the operation and administration of the lottery. During the 2001-2003 fiscal biennium, the legislature may transfer from the lottery administrative account to the state general fund such amounts as reflect the appropriations reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings. During the 2011-2013 fiscal biennium, the lottery administrative account may also be used to fund an independent forecast of the lottery revenues conducted by the economic and revenue forecast council. [2011 1st sp.s. c 50 § 962; 2002 c 371 § 919; 1985 c 375 § 6; 1982 2nd ex.s. c 7 § 26.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

67.70.500 Veteran lottery raffle—Created. Beginning in calendar year 2011, and on an annual basis thereafter, the lottery will offer a statewide raffle to benefit veterans and their families. The veterans raffle ticket will go on sale on Labor Day with a drawing to occur on Veteran's Day, November 11th of each year. [2011 c 352 § 2.]

Intent—2011 c 352: "In recognition of the extraordinary sacrifices made by the men and women serving in the United States armed forces, including Washington state's national guard and reserves, the legislature intends to authorize an ongoing source of funding to preserve the veterans innovations program. This important program provides assistance to military members and their families who face extreme financial hardships due to extended deployments." [2011 c 352 § 1.]

Title 68

CEMETERIES, MORGUES, AND HUMAN REMAINS

Chapters

68.50 Human remains.

68.52 Public cemeteries and morgues.

Chapter 68.50 RCW HUMAN REMAINS

Sections

68.50.050 Removal or concealment of body—Penalty.

68.50.070 Human remains—Disposition.

68.50.105 Autopsies, post mortems—Reports and records confidential—Exceptions.

68.50.107 State toxicological laboratory established—State toxicologist.

68.50.160 Right to control disposition of remains—Liability of funeral establishment or cemetery authority—Liability for cost.

68.50.050 Removal or concealment of body—Penalty. Any person, not authorized by the coroner or his or her deputies, who removes the body of a deceased person not claimed by a relative or friend, or who came to their death by reason of violence or from unnatural causes or where there shall exist reasonable grounds for the belief that such death has been caused by unlawful means at the hands of another, to any undertaking rooms or elsewhere, or any person who directs, aids or abets such taking, and any person who in any way conceals the body of a deceased person for the purpose of taking the same to any undertaking rooms or elsewhere, shall in each of said cases be guilty of a gross misdemeanor and upon conviction thereof shall be punished by fine of not more than one thousand dollars, or by imprisonment in the county jail for up to three hundred sixty-four days or by both fine and imprisonment in the discretion of the court. [2011 c 96 § 48; 1917 c 90 § 7; RRS § 6046. Formerly RCW 68.08.050.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

68.50.070 Human remains—Disposition. (1) Any public agency required to provide for the disposition of human remains in any legal manner at public expense must surrender the human remains to:

(a) Any physician or surgeon, to be used for the advancement of anatomical science, preference being given to medical schools in this state, for their use in the instruction of medical students; or

(b) An accredited educational institution offering funeral services and embalming programs for use in training embalming students under the supervision of an embalmer licensed under chapter 18.39 RCW.

(2) If the deceased person requested to be buried, or if some person claiming to be a relative or a responsible officer of a religious organization with which the deceased at the time of death was affiliated requires the remains to be buried, the remains must be buried, subject to the requirements of RCW 68.50.110 and 68.50.230. [2011 c 265 § 1; 1959 c 23 § 1; 1953 c 224 § 2; 1891 c 123 § 2; RRS § 10027. Formerly RCW 68.08.070.]

68.50.105 Autopsies, post mortems—Reports and records confidential—Exceptions. Reports and records of autopsies or post mortems shall be confidential, except that the following persons may examine and obtain copies of any such report or record: The personal representative of the decedent as defined in RCW 11.02.005, any family member, the attending physician or advanced registered nurse practitioner, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, the department of labor and industries in cases in which it has an interest under RCW 68.50.103, or the secretary of the department of social and health services or his or her designee in cases being reviewed under RCW 74.13.640.

The coroner, the medical examiner, or the attending physician shall, upon request, meet with the family of the decedent to discuss the findings of the autopsy or post mortem. For the purposes of this section, the term "family" means the surviving spouse, state registered domestic partner, or any child, parent, grandparent, grandchild, brother, or sister of the decedent, or any person who was guardian of the decedent at

the time of death. [2011 c 61 § 1. Prior: 2007 c 439 § 1; 2007 c 156 § 23; 1987 c 331 § 58; 1985 c 300 § 1; 1977 c 79 § 2; 1953 c 188 § 9. Formerly RCW 68.08.105.]

68.50.107 State toxicological laboratory established—State toxicologist. There shall be established in conjunction with the chief of the Washington state patrol and under the authority of the state forensic investigations council a state toxicological laboratory under the direction of the state toxicologist whose duty it will be to perform all necessary toxicologic procedures requested by all coroners, medical examiners, and prosecuting attorneys. The state forensic investigations council, after consulting with the chief of the Washington state patrol and director of the bureau of forensic laboratory services, shall appoint a toxicologist as state toxicologist, who shall report to the director of the bureau of forensic laboratory services and the office of the chief of the Washington state patrol. Toxicological services shall be funded by disbursement from the spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; spirits, beer, and wine VIP airport lounge; and sports entertainment facility license fees as provided in RCW 66.08.180 and by appropriation from the death investigations account as provided in RCW 43.79.445. [2011 c 325 § 9; 2009 c 271 § 11. Prior: 1999 c 281 § 13; 1999 c 40 § 8; 1995 c 398 § 10; 1986 c 87 § 2; 1983 1st ex.s. c 16 § 10; 1975-'76 2nd ex.s. c 84 § 1; 1970 ex.s. c 24 § 1; 1953 c 188 § 13. Formerly RCW 68.08.107.]

State forensic investigations council: Chapter 43.103 RCW.

Additional notes found at www.leg.wa.gov

68.50.160 Right to control disposition of remains—Liability of funeral establishment or cemetery authority—Liability for cost. (1) A person has the right to control the disposition of his or her own remains without the predeath or postdeath consent of another person. A valid written document expressing the decedent's wishes regarding the place or method of disposition of his or her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.

(2) Prearrangements that are prepaid, or filed with a licensed funeral establishment or cemetery authority, under RCW 18.39.280 through 18.39.345 and chapter 68.46 RCW are not subject to cancellation or substantial revision by survivors. Absent actual knowledge of contrary legal authorization under this section, a licensed funeral establishment or cemetery authority shall not be held criminally nor civilly liable for acting upon such prearrangements.

(3) If the decedent has not made a prearrangement as set forth in subsection (2) of this section or the costs of executing the decedent's wishes regarding the disposition of the decedent's remains exceeds a reasonable amount or directions have not been given by the decedent, the right to control the disposition of the remains of a deceased person vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:

(a) The designated agent of the decedent as directed through a written document signed and dated by the decedent in the presence of a witness. The direction of the designated

agent is sufficient to direct the type, place, and method of disposition.

(b) The surviving spouse or state registered domestic partner.

(c) The majority of the surviving adult children of the decedent.

(d) The surviving parents of the decedent.

(e) The majority of the surviving siblings of the decedent.

(f) A court-appointed guardian for the person at the time of the person's death.

(4) If any person to whom the right of control has vested pursuant to subsection (3) of this section has been arrested or charged with first or second degree murder or first degree manslaughter in connection with the decedent's death, the right of control is relinquished and passed on in accordance with subsection (3) of this section.

(5) If a cemetery authority as defined in RCW 68.04.190 or a funeral establishment licensed under chapter 18.39 RCW has made a good faith effort to locate the person cited in subsection (3)(a) through (f) of this section or the legal representative of the decedent's estate, the cemetery authority or funeral establishment shall have the right to rely on an authority to bury or cremate the human remains, executed by the most responsible party available, and the cemetery authority or funeral establishment may not be held criminally or civilly liable for burying or cremating the human remains. In the event any government agency or charitable organization provides the funds for the disposition of any human remains, the cemetery authority or funeral establishment may not be held criminally or civilly liable for cremating the human remains.

(6) The liability for the reasonable cost of preparation, care, and disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred, in the order listed in subsection (3) of this section, and upon the estate of the decedent. [2011 c 265 § 2; 2010 c 274 § 602; 2007 c 156 § 24; 2005 c 365 § 141; 1993 c 297 § 1; 1992 c 108 § 1; 1943 c 247 § 29; Rem. Supp. 1943 § 3778-29. Formerly RCW 68.08.160.]

Intent—2010 c 274: See note following RCW 10.31.100.

Disposal of remains of indigent persons: RCW 36.39.030.

Order of payment of debts of estate: RCW 11.76.110.

Chapter 68.52 RCW

PUBLIC CEMETERIES AND MORGUES

Sections

68.52.220 District commissioners—Compensation—Election. (*Effective January 1, 2012.*)

68.52.220 District commissioners—Compensation—Election. (*Effective January 1, 2012.*) The affairs of the district shall be managed by a board of cemetery district commissioners composed of three members. The board may provide, by resolution passed by the commissioners, for the payment of compensation to each of its commissioners at a rate of up to ninety dollars for each day or portion of a day spent in actual attendance at official meetings of the district commission, or in performance of other official services or duties

on behalf of the district. However, the compensation for each commissioner must not exceed eight thousand six hundred forty dollars per year.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the clerk of the board. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. The board shall fix the compensation to be paid the secretary and other employees of the district. Cemetery district commissioners and candidates for cemetery district commissioner are exempt from the requirements of chapter 42.17A RCW.

The initial cemetery district commissioners shall assume office immediately upon their election and qualification. Staggering of terms of office shall be accomplished as follows: (1) The person elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners shall assume office immediately after they are elected and qualified but their terms of office shall be calculated from the first day of January after the election.

Thereafter, commissioners shall be elected to six-year terms of office. Commissioners shall serve until their successors are elected and qualified and assume office as provided in RCW 29A.20.040.

The polling places for a cemetery district election may be located inside or outside the boundaries of the district, as determined by the auditor of the county in which the cemetery district is located, and no such election shall be held irregular or void on that account.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2011 c 60 § 47; 2007 c 469 § 6; 1998 c 121 § 6; 1994 c 223 § 77; 1990 c 259 § 33; 1982 c 60 § 3; 1979 ex.s. c 126 § 40; 1947 c 6 § 14; Rem. Supp. 1947 § 3778-163. Formerly RCW 68.16.140.]

Effective date—2011 c 60: See RCW 42.17A.919.

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

Title 69

**FOOD, DRUGS, COSMETICS,
AND POISONS**

Chapters

- 69.07** Washington food processing act.
- 69.22** Cottage food operations.
- 69.25** Washington wholesome eggs and egg products act.
- 69.30** Sanitary control of shellfish.
- 69.41** Legend drugs—Prescription drugs.
- 69.43** Precursor drugs.
- 69.50** Uniform controlled substances act.
- 69.51A** Medical cannabis.

Chapter 69.07 RCW

WASHINGTON FOOD PROCESSING ACT

Sections

- 69.07.100 Establishments exempted from provisions of chapter.
- 69.07.120 Disposition of money into food processing inspection account.

69.07.100 Establishments exempted from provisions of chapter. (1) The provisions of this chapter shall not apply to establishments issued a permit or licensed under the provisions of:

- (a) Chapter 69.25 RCW, the Washington wholesome eggs and egg products act;
- (b) Chapter 69.28 RCW, the Washington state honey act;
- (c) Chapter 16.49 RCW, the meat inspection act;
- (d) Chapter 77.65 RCW, relating to the direct retail endorsement for wild-caught seafood;
- (e) Chapter 69.22 RCW, relating to cottage food operations;
- (f) Title 66 RCW, relating to alcoholic beverage control; and
- (g) Chapter 69.30 RCW, the sanitary control of shellfish act.

(2) If any such establishments process foods not specifically provided for in the above entitled acts, the establishments are subject to the provisions of this chapter.

(3) The provisions of this chapter do not apply to restaurants or food service establishments. [2011 c 281 § 13; 2002 c 301 § 10; 1995 c 374 § 22; 1988 c 5 § 4; 1983 c 3 § 168; 1967 ex.s. c 121 § 10.]

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

Additional notes found at www.leg.wa.gov

69.07.120 Disposition of money into food processing inspection account. All moneys received by the department under the provisions of this chapter and chapter 69.22 RCW shall be paid into the food processing inspection account hereby created within the agricultural local fund established in RCW 43.23.230 and shall be used solely to carry out the provisions of this chapter and chapters 69.22 and 69.04 RCW. [2011 c 281 § 12; 1992 c 160 § 5; 1967 ex.s. c 121 § 12.]

Chapter 69.22 RCW

COTTAGE FOOD OPERATIONS

Sections

- 69.22.010 Definitions.
- 69.22.020 Requirements—Authority of director.
- 69.22.030 Permits, permit renewals.
- 69.22.040 Basic hygiene inspections.
- 69.22.050 Annual gross sales—Department to determine annual amount.
- 69.22.060 Access to permitted areas of domestic residence housing cottage food operations—Authority of director.
- 69.22.070 Cottage foods operations permit—Denial, suspension, or revocation.
- 69.22.080 Application of administrative procedure act.
- 69.22.090 Penalties.
- 69.22.100 Exemption—Provisions of chapter 69.07 RCW or permitting and inspection by local health jurisdiction.
- 69.22.110 Application of other state or federal laws or local unit of government ordinances not affected.

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

(1) "Cottage food operation" means a person who produces cottage food products only in the home kitchen of that person's primary domestic residence in Washington and only for sale directly to the consumer.

(2) "Cottage food products" means nonpotentially hazardous baked goods; jams, jellies, preserves, and fruit butters as defined in 21 C.F.R. Sec. 150 as it existed on July 22, 2011; and other nonpotentially hazardous foods identified by the director in rule.

(3) "Department" means the department of agriculture.

(4) "Director" means the director of the department.

(5) "Domestic residence" means a single-family dwelling or an area within a rental unit where a single person or family actually resides. Domestic residence does not include:

(a) A group or communal residential setting within any type of structure; or

(b) An outbuilding, shed, barn, or other similar structure.

(6) "Home kitchen" means a kitchen primarily intended for use by the residents of a home. It may contain one or more stoves or ovens, which may be a double oven, designed for residential use.

(7) "Permitted area" means the portion of a domestic residence housing a home kitchen where the preparation, packaging, storage, or handling of cottage food products occurs.

(8) "Potentially hazardous food" means foods requiring temperature control for safety because they are capable of supporting the rapid growth of pathogenic or toxigenic

microorganisms, or the growth and toxin production of *Clostridium botulinum*. [2011 c 281 § 1.]

69.22.020 Requirements—Authority of director. (1)

The director may adopt, by rule, requirements for cottage food operations. These requirements may include, but are not limited to:

(a) The application and renewal of permits under RCW 69.22.030;

(b) Inspections as provided under RCW 69.22.040;

(c) Sanitary procedures;

(d) Facility, equipment, and utensil requirements;

(e) Labeling specificity beyond the requirements of this section;

(f) Requirements for clean water sources and waste and wastewater disposal; and

(g) Requirements for washing and other hygienic practices.

(2) A cottage food operation must package and properly label for sale to the consumer any food it produces, and the food may not be repackaged, sold, or used as an ingredient in other foods by a food processing plant, or sold by a food service establishment.

(3) A cottage food operation must place on the label of any food it produces or packages, at a minimum, the following information:

(a) The name and address of the business of the cottage food operation;

(b) The name of the cottage food product;

(c) The ingredients of the cottage food product, in descending order of predominance by weight;

(d) The net weight or net volume of the cottage food product;

(e) Allergen labeling as specified by the director in rule;

(f) If any nutritional claim is made, appropriate labeling as specified by the director in rule;

(g) The following statement printed in at least the equivalent of eleven-point font size in a color that provides a clear contrast to the background: "Made in a home kitchen that has not been subject to standard inspection criteria."

(4) Cottage food products may only be sold directly to the consumer and may not be sold by internet, mail order, or for retail sale outside the state.

(5) Cottage food products must be stored only in the primary domestic residence. [2011 c 281 § 2.]

69.22.030 Permits, permit renewals. (1) All cottage food operations must be permitted annually by the department on forms developed by the department. All permits and permit renewals must be made on forms developed by the director and be accompanied by an inspection fee as provided in RCW 69.22.040, a seventy-five dollar public health review fee, and a thirty dollar processing fee. All fees must be deposited into the food processing inspection account created in RCW 69.07.120.

(2) In addition to the provision of any information required by the director on forms developed under subsection (1) of this section and the payment of all fees, an applicant for a permit or a permit renewal as a cottage food operation must also provide documentation that all individuals to be

involved in the preparation of cottage foods [cottage food products] have secured a food and beverage service worker's permit under chapter 69.06 RCW.

(3) All cottage food operations permitted under this section must include a signed document attesting, by opting to become permitted, that the permitted cottage food operation expressly grants to the director the right to enter the domestic residence housing the cottage food operation during normal business hours, or at other reasonable times, for the purposes of inspections under this chapter. [2011 c 281 § 3.]

69.22.040 Basic hygiene inspections. (1) The permitted area of all cottage food operations must be inspected for basic hygiene by the director both before initial permitting under RCW 69.22.030 and annually after initial permitting. In addition, the director may inspect the permitted area of a cottage food operation at any time in response to a foodborne outbreak or other public health emergency.

(2) When conducting an annual basic hygiene inspection, the director shall, at a minimum, inspect for the following:

(a) That the permitted cottage food operator understands that no person other than the permittee, or a person under the direct supervision of the permittee, may be engaged in the processing, preparing, packaging, or handling of any cottage food products or be in the home kitchen during the preparation, packaging, or handling of any cottage food products;

(b) That no cottage food preparation, packaging, or handling is occurring in the home kitchen concurrent with any other domestic activities such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment;

(c) That no infants, small children, or pets are in the home kitchen during the preparation, packaging, or handling of any cottage food products;

(d) That all food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage food products are washed, rinsed, and sanitized before each use;

(e) That all food preparation and food and equipment storage areas are maintained free of rodents and insects; and

(f) That all persons involved in the preparation and packaging of cottage food products:

(i) Have obtained a food and beverage service worker's permit under chapter 69.06 RCW;

(ii) Are not going to work in the home kitchen when ill;

(iii) Wash their hands before any food preparation and food packaging activities; and

(iv) Avoid bare hand contact with ready-to-eat foods through the use of single-service gloves, bakery papers, tongs, or other utensils.

(3) The department shall charge an inspection fee of one hundred twenty-five dollars for any initial or annual basic hygiene inspection, which must be deposited into the food processing inspection account created in RCW 69.07.120. An additional inspection fee must be collected for each visit to a cottage food operation for the purposes of conducting an inspection for compliance.

(4) The director may contract with local health jurisdictions to conduct the inspections required under this section. [2011 c 281 § 4.]

69.22.050 Annual gross sales—Department to determine annual amount. (1) The gross sales of cottage food products may not exceed an annual amount set by the department. The determination of the maximum annual gross sales must be computed on the basis of the amount of gross sales within or at a particular domestic residence and may not be computed on a per person basis within or at an individual domestic residence.

(2) If gross sales exceed the maximum annual gross sales amount, the cottage food operation must either obtain a food processing plant license under chapter 69.07 RCW or cease operations.

(3) A cottage food operation exceeding the maximum annual gross sales amount is not entitled to a full or partial refund of any fees paid under RCW 69.22.030 or 69.22.040.

(4) The maximum annual gross sales amount must be established in rule by the department consistent with this subsection. The amount must be set at fifteen thousand dollars until December 31, 2012. Beginning January 1, 2013, the department must increase the fifteen thousand dollar annual gross sales limit biennially to reflect inflation. The department may determine inflation-based increases in any matter it deems most efficient.

(5) The director may request in writing documentation to verify the annual gross sales figure. [2011 c 281 § 5.]

69.22.060 Access to permitted areas of domestic residence housing cottage food operations—Authority of director. (1) For the purpose of determining compliance with this chapter, the director may access, for inspection purposes, the permitted area of a domestic residence housing a cottage food operation permitted by the director under this chapter. This authority includes the authority to inspect any records required to be kept under the provisions of this chapter.

(2) All inspections must be made at reasonable times and, when possible, during regular business hours.

(3) Should the director be denied access to the permitted area of a domestic residence housing a cottage food operation where access was sought for the purposes of enforcing or administering this chapter, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to the permitted area of a domestic residence housing a permitted cottage food operation, upon which the court may issue a search warrant for the purposes requested.

(4) Any access under this section must be limited to the permitted area and further limited to the purpose of enforcing or administering this chapter. [2011 c 281 § 6.]

69.22.070 Cottage foods operations permit—Denial, suspension, or revocation. (1) After conducting a hearing, the director may deny, suspend, or revoke any permit provided for in this chapter if it is determined that a permittee has committed any of the following acts:

(a) Refused, neglected, or failed to comply with the provisions of this chapter, any rules adopted to administer this chapter, or any lawful order of the director;

(b) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make the records available when requested pursuant to the provisions of this chapter;

(c) Consistent with RCW 69.22.060, refused the director access to the permitted area of a domestic residence housing a cottage food operation for the purpose of carrying out the provisions of this chapter;

(d) Consistent with RCW 69.22.060, refused the department access to any records required to be kept under the provisions of this chapter; or

(e) Exceeded the annual income limits provided in RCW 69.22.050.

(2) The director may summarily suspend a permit issued under this chapter if the director finds that a cottage food operation is operating under conditions that constitute an immediate danger to public health or if the director is denied access to the permitted area of a domestic residence housing a cottage food operation and records where the access was sought for the purposes of enforcing or administering this chapter. [2011 c 281 § 7.]

69.22.080 Application of administrative procedure act. The rights, remedies, and procedures respecting the administration of this chapter, including rule making, emergency actions, and permit suspension, revocation, or denial are governed by chapter 34.05 RCW. [2011 c 281 § 8.]

69.22.090 Penalties. (1)(a) Any person engaging in a cottage food operation without a valid permit issued under RCW 69.22.030 or otherwise violating any provision of this chapter, or any rule adopted under this chapter, is guilty of a misdemeanor.

(b) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense. [2011 c 281 § 9.]

69.22.100 Exemption—Provisions of chapter 69.07 RCW or permitting and inspection by local health jurisdiction. Except as otherwise provided in this chapter, cottage food operations with a valid permit under RCW 69.22.030 are not subject to the provisions of chapter 69.07 RCW or to permitting and inspection by a local health jurisdiction. [2011 c 281 § 10.]

69.22.110 Application of other state or federal laws or local unit of government ordinances not affected. Nothing in this chapter affects the application of any other state or federal laws or any applicable ordinances enacted by any local unit of government. [2011 c 281 § 11.]

Chapter 69.25 RCW

WASHINGTON WHOLESOME EGGS AND EGG PRODUCTS ACT

Sections

69.25.020 Definitions. (Effective August 1, 2012.)

- 69.25.050 Egg handler's or dealer's license and number—Branch license—Application, fee, posting required, procedure. *(Effective August 1, 2012.)*
- 69.25.065 Egg handler's or dealer's license—Renewal applications—Egg and egg products provided in intrastate commerce produced by commercial egg layer operations—Proof. *(Effective August 1, 2012.)*
- 69.25.103 Eggs or egg products—In-state production—Associated commercial egg layer operation compliance with applicable standards. *(Effective August 1, 2012.)*
- 69.25.107 Commercial egg layer operations—Requirements. *(Effective August 1, 2012.)*
- 69.25.150 Penalties—Liability of employer—Defense.
- 69.25.250 Assessment—Rate, applicability, time of payment—Reports—Contents, frequency—Exemption. *(Effective August 1, 2012.)*

69.25.020 Definitions. *(Effective August 1, 2012.)*

When used in this chapter the following terms shall have the indicated meanings, unless the context otherwise requires:

(1) "Adulterated" applies to any egg or egg product under one or more of the following circumstances:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance (other than one which is: (i) A pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the director, make such article unfit for human food;

(c) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, as enacted or hereafter amended;

(d) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394, as enacted or hereafter amended;

(e) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396; however, an article which is not otherwise deemed adulterated under subsection (1)(c), (d), or (e) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the director in official plants;

(f) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(g) If it consists in whole or in part of any damaged egg or eggs to the extent that the egg meat or white is leaking, or it has been contacted by egg meat or white leaking from other eggs;

(h) If it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(i) If it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(j) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(k) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394; or

(1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(2) "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs.

(3) "At retail" means any transaction in intrastate commerce between a retailer and a consumer.

(4) "Candling" means the examination of the interior of eggs by the use of transmitted light used in a partially dark room or place.

(5) "Capable of use as human food" shall apply to any egg or egg product unless it is denatured, or otherwise identified, as required by regulations prescribed by the director, to deter its use as human food.

(6) "Check" means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(7) "Clean and sound shell egg" means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(8) "Consumer" means any person who purchases eggs for his or her own family use or consumption; or any restaurant, hotel, boarding house, bakery, or other institution or concern which purchases eggs for serving to guests or patrons thereof, or for its own use in cooking or baking.

(9) "Container" or "package" includes any box, can, tin, plastic, or other receptacle, wrapper, or cover.

(10) "Department" means the department of agriculture of the state of Washington.

(11) "Director" means the director of the department or his duly authorized representative.

(12) "Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material.

(13) "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea, or any other species of fowl.

(14) "Egg handler" or "dealer" means any person who produces, contracts for or obtains possession or control of any eggs or egg products for the purpose of sale to another dealer or retailer, or for processing and sale to a dealer, retailer or consumer. For the purpose of this chapter, "sell" or "sale" includes the following: Offer for sale, expose for sale, have in possession for sale, exchange, barter, trade, or as an inducement for the sale of another product.

(15)(a) "Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion, or historically have not been, in the judgment of the director, considered by consumers as products of the egg food industry, and which may be exempted by the director under such conditions as the director may prescribe to assure that the egg ingredients are not adulterated and are not represented as egg products.

(b) The following products are not included in the definition of "egg product" if they are prepared from eggs or egg products that have been either inspected by the United States department of agriculture or by the department under a cooperative agreement with the United States department of agriculture: Freeze-dried products, imitation egg products, egg substitutes, dietary foods, dried no-bake custard mixes, egg-nog mixes, acidic dressings, noodles, milk and egg dip, cake mixes, French toast, balut and other similar ethnic delicacies, and sandwiches containing eggs or egg products.

(16) "Immediate container" means any consumer package, or any other container in which egg products, not consumer-packaged, are packed.

(17) "Incubator reject" means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(18) "Inedible" means eggs of the following descriptions: Black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(19) "Inspection" means the application of such inspection methods and techniques as are deemed necessary by the director to carry out the provisions of this chapter.

(20) "Inspector" means any employee or official of the department authorized to inspect eggs or egg products under the authority of this chapter.

(21) "Intrastate commerce" means any eggs or egg products in intrastate commerce, whether such eggs or egg products are intended for sale, held for sale, offered for sale, sold, stored, transported, or handled in this state in any manner and prepared for eventual distribution in this state, whether at wholesale or retail.

(22) "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(23) "Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(24) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

(25) "Misbranded" shall apply to egg products which are not labeled and packaged in accordance with the requirements prescribed by regulations of the director under RCW 69.25.100.

(26) "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter.

(27) "Official device" means any device prescribed or authorized by the director for use in applying any official mark.

(28) "Official inspection legend" means any symbol prescribed by regulations of the director showing that egg products were inspected in accordance with this chapter.

(29) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article under this chapter.

(30) "Official plant" means any plant which is licensed under the provisions of this chapter, at which inspection of the processing of egg products is maintained by the United States department of agriculture or by the state under cooperative agreements with the United States department of agriculture or by the state.

(31) "Official standards" means the standards of quality, grades, and weight classes for eggs, adopted under the provisions of this chapter.

(32) "Pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful, viable micro-organisms by such processes as may be prescribed by regulations of the director.

(33) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof, or assignee for the benefit of creditors.

(34) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meaning for purposes of this chapter as prescribed in chapter 69.04 RCW.

(35) "Plant" means any place of business where egg products are processed.

(36) "Processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.

(37) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss.

(38) "Retailer" means any person in intrastate commerce who sells eggs to a consumer.

(39) "Shipping container" means any container used in packaging a product packed in an immediate container. [2011 c 306 § 1; 1995 c 374 § 25; 1982 c 182 § 42; 1975 1st ex.s. c 201 § 3.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2011 c 306: "This act takes effect August 1, 2012." [2011 c 306 § 7.]

Additional notes found at www.leg.wa.gov

69.25.050 Egg handler's or dealer's license and number—Branch license—Application, fee, posting required, procedure. (Effective August 1, 2012.) (1)(a) No person shall act as an egg handler or dealer without first obtaining an annual license and permanent dealer's number from the department.

(b) Application for an egg dealer license or egg dealer branch license must be made through the master license system as provided under chapter 19.02 RCW and expires on the master license expiration date. The annual egg dealer license fee is thirty dollars and the annual egg dealer branch license fee is fifteen dollars. A copy of the master license must be posted at each location where the licensee operates. The application must include the full name of the applicant for the

license, the location of each facility the applicant intends to operate, and, if applicable, documentation of compliance with RCW 69.25.065 or 69.25.103.

(2) If an applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application. The application must further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant and any other necessary information prescribed by the director.

(3) The applicant must be issued a license or renewal under this section upon the approval of the application and compliance with the provisions of this chapter, including the applicable rules adopted by the department.

(4) The license and permanent egg handler or dealer's number is nontransferable. [2011 c 306 § 2; 1995 c 374 § 26; 1982 c 182 § 43; 1975 1st ex.s. c 201 § 6.]

Effective date—2011 c 306: See note following RCW 69.25.020.

Master license—Expiration date: RCW 19.02.090.

Master license system

definition: RCW 69.25.020(24).

existing licenses or permits registered under, when: RCW 19.02.810.

to include additional licenses: RCW 19.02.110.

Additional notes found at www.leg.wa.gov

69.25.065 Egg handler's or dealer's license—Renewal applications—Egg and egg products provided in intrastate commerce produced by commercial egg layer operations—Proof. (Effective August 1, 2012.) (1) All new and renewal applications submitted under RCW 69.25.050 before January 1, 2026, must include proof that all eggs and egg products provided in intrastate commerce by the applicant are produced by commercial egg layer operations:

(a) With a current certification under the 2010 version of the united egg producers animal husbandry guidelines for United States egg laying flocks for conventional cage systems or cage-free systems or a subsequent version of the guidelines recognized by the department in rule; or

(b) Operated in strict compliance with any standards, adopted by the department in rule, that are equivalent to or more stringent than the standards identified in (a) of this subsection.

(2) All new and renewal applications submitted under RCW 69.25.050 before January 1, 2017, must, in addition to complying with subsection (1) of this section, include proof that all eggs and egg products provided in intrastate commerce by the applicant are produced by commercial egg layer operations whose housing facilities, if built between January 1, 2012, and December 31, 2016, are either:

(a) Approved under, or convertible to, the American humane association facility system plan for enriched colony housing in effect on January 1, 2011, or a subsequent version of the plan recognized by the department in rule and, in addition, are convertible to the standards identified in RCW 69.25.107; or

(b) Operated in strict compliance with any standards, adopted by the department in rule, that are equivalent to or

more stringent than the standards identified in (a) of this subsection.

(3) All new and renewal applications submitted under RCW 69.25.050 between January 1, 2017, and December 31, 2025, must, in addition to complying with subsection (1) of this section, include proof that all eggs and egg products provided in intrastate commerce by the applicant are produced by commercial egg layer operations whose housing facilities, if built on or after January 1, 2012, are either:

(a) Approved under the American humane association facility system plan and audit protocol for enriched colony housing in effect on January 1, 2011, or a subsequent version of the plan recognized by the department in rule and, in addition, are operated to the standards identified in RCW 69.25.107; or

(b) Operated in strict compliance with any standards, adopted by the department in rule, that are equivalent to or more stringent than the standards identified in (a) of this subsection.

(4) All new and renewal applications submitted under RCW 69.25.050 on or after January 1, 2026, must include proof that all eggs and egg products provided in intrastate commerce by the applicant are produced by commercial egg layer operations that are either:

(a) Approved under the American humane association facility system plan and audit protocol for enriched colony housing in effect on January 1, 2011, or a subsequent version of the plan recognized by the department in rule and, in addition, are operated to the standards identified in RCW 69.25.107; or

(b) Operated in strict compliance with any standards, adopted by the department in rule, that are equivalent to or more stringent than the standards identified in (a) of this subsection.

(5) The following are exempt from the requirements of subsections (2) and (3) of this section:

(a) Applicants with fewer than three thousand laying chickens; and

(b) Commercial egg layer operations when producing eggs or egg products from turkeys, ducks, geese, guineas, or other species of fowl other than domestic chickens. [2011 c 306 § 3.]

Effective date—2011 c 306: See note following RCW 69.25.020.

69.25.103 Eggs or egg products—In-state production—Associated commercial egg layer operation compliance with applicable standards. (Effective August 1, 2012.) Any egg handler or dealer involved with the in-state production of eggs or egg products only intended for sale outside of the state of Washington must ensure that the associated commercial egg layer operation is in compliance with the applicable standards as provided in RCW 69.25.065. [2011 c 306 § 4.]

Effective date—2011 c 306: See note following RCW 69.25.020.

69.25.107 Commercial egg layer operations—Requirements. (Effective August 1, 2012.) (1) All commercial egg layer operations required under RCW 69.25.065 to meet the American humane association facility system

plan, or an equivalent to the plan, must also ensure that all hens in the operation are provided with:

(a) No less than one hundred sixteen and three-tenths square inches of space per hen; and

(b) Access to areas for nesting, scratching, and perching.

(2) The requirements of this section apply for any commercial egg layer operation on the same dates that RCW 69.25.065 requires compliance with the American humane association facility system plan or an equivalent to the plan. [2011 c 306 § 5.]

Effective date—2011 c 306: See note following RCW 69.25.020.

69.25.150 Penalties—Liability of employer—

Defense. (1)(a) Except as provided in (b) of this subsection, any person violating any provision of this chapter or any rule adopted under this chapter is guilty of a misdemeanor.

(b) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense.

(3) When construing or enforcing the provisions of RCW 69.25.110, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of the person's employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(4) No carrier or warehouse operator shall be subject to the penalties of this chapter, other than the penalties for violation of RCW 69.25.140, or 69.25.155, by reason of his or her receipt, carriage, holding, or delivery, in the usual course of business, as a carrier or warehouse operator of eggs or egg products owned by another person unless the carrier or warehouse operator has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this chapter, or unless the carrier or warehouse operator refuses to furnish on request of a representative of the director the name and address of the person from whom he or she received such eggs or egg products and copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouse operator. [2011 c 336 § 836; 2003 c 53 § 317; 1995 c 374 § 27; 1992 c 7 § 47; 1975 1st ex.s. c 201 § 16.]

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

Additional notes found at www.leg.wa.gov

69.25.250 Assessment—Rate, applicability, time of payment—Reports—Contents, frequency—Exemption. (Effective August 1, 2012.) (1)(a) There is hereby levied an assessment not to exceed three mills per dozen eggs entering intrastate commerce, as prescribed by rules issued by the

director. The assessment is applicable to all eggs entering intrastate commerce, except as provided in RCW 69.25.170 and 69.25.290, and must be paid to the director on a monthly basis on or before the tenth day following the month the eggs enter intrastate commerce.

(b) The director may require reports by egg handlers or dealers along with the payment of the assessment fee. The reports may include any and all pertinent information necessary to carry out the purposes of this chapter.

(c) The director may, by rule, require egg container manufacturers to report on a monthly basis all egg containers sold to any egg handler or dealer and bearing such egg handler or dealer's permanent number.

(2) Egg products in intrastate commerce are exempt from the assessment in subsection (1) of this section. [2011 c 306 § 6; 1995 c 374 § 29; 1993 sp.s. c 19 § 12; 1975 1st ex.s. c 201 § 26.]

Effective date—2011 c 306: See note following RCW 69.25.020.

Additional notes found at www.leg.wa.gov

Chapter 69.30 RCW

SANITARY CONTROL OF SHELLFISH

Sections

69.30.010	Definitions.
69.30.020	Approved shellfish tag or label—Requirement to sell or offer to sell shellfish.
69.30.030	Rules and regulations—Duties of state board of health.
69.30.050	Shellfish growing areas—Requirements to harvest—Certificates of approval.
69.30.060	Certificates of approval—Culling, shucking, packing establishments.
69.30.080	Licenses or certificates of approval—Department may deny, revoke, or suspend.
69.30.085	License, certificate of approval—Denial, revocation, suspension—Prohibited acts—Penalties.
69.30.110	Possession or sale in violation of chapter—Enforcement—Seizure—Disposal.
69.30.140	Penalties.

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

(1) "Approved shellfish tag or label" means a tag or label meeting the requirements of the national shellfish sanitation program model ordinance.

(2) "Commercial quantity" means any quantity exceeding: (a) Forty pounds of mussels; (b) one hundred oysters; (c) fourteen horse clams; (d) six geoducks; (e) fifty pounds of hard or soft shell clams; or (f) fifty pounds of scallops. The poundage in this subsection (2) constitutes weight with the shell.

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

(4) "Establishment" means the buildings, together with the necessary equipment and appurtenances, used for the storage, culling, shucking, packing and/or shipping of shellfish in commercial quantity or for sale for human consumption.

(5) "Ex officio fish and wildlife officer" means an ex officio fish and wildlife officer as defined in RCW 77.08.010.

(6) "Fish and wildlife officer" means a fish and wildlife officer as defined in RCW 77.08.010.

(7) "Person" means any individual, partnership, firm, company, corporation, association, or the authorized agents of any such entities.

(8) "Sale" means to sell, offer for sale, barter, trade, deliver, consign, hold for sale, consignment, barter, trade, or delivery, and/or possess with intent to sell or dispose of in any commercial manner.

(9) "Secretary" means the secretary of health or his or her authorized representatives.

(10) "Shellfish" means all varieties of fresh and frozen oysters, mussels, clams, and scallops, either shucked or in the shell, and any fresh or frozen edible products thereof.

(11) "Shellfish growing areas" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantity or for sale for human consumption.

(12) "Shellstock" means live molluscan shellfish in the shell. [2011 c 194 § 1; 2001 c 253 § 5; 1995 c 147 § 1; 1991 c 3 § 303; 1989 c 200 § 1; 1985 c 51 § 1; 1979 c 141 § 70; 1955 c 144 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

69.30.020 Approved shellfish tag or label—Requirement to sell or offer to sell shellfish. It is unlawful to sell or offer to sell shellfish in this state unless the shellfish bear an approved shellfish tag or label indicating compliance with the sanitary requirements of this state or a state, territory, province, or country of origin whose requirements are equal or comparable to those established pursuant to this chapter. The department, a fish and wildlife officer, or an ex officio fish and wildlife officer may immediately seize containers of shellfish that are not affixed with an approved shellfish tag or label. [2011 c 194 § 2; 1955 c 144 § 2.]

69.30.030 Rules and regulations—Duties of state board of health. (1) The state board of health shall adopt rules governing the sanitation of shellfish, shellfish growing areas, and shellfish plant facilities and operations in order to protect public health and carry out the provisions of this chapter. Such rules and regulations may include reasonable sanitary requirements relative to the quality of shellfish growing waters and areas, boat and barge sanitation, building construction, water supply, sewage and waste water disposal, lighting and ventilation, insect and rodent control, shell disposal, garbage and waste disposal, cleanliness of establishment, the handling, storage, construction and maintenance of equipment, the handling, storage and refrigeration of shellfish, the identification of containers, and the handling, maintenance, and storage of permits, certificates, and records regarding shellfish taken under this chapter. The state board of health shall adopt rules governing procedures for the disposition of seized shellfish.

(2) The state board of health shall consider the most recent version of the national shellfish sanitation program model ordinance, adopted by the interstate shellfish sanitation conference, when adopting rules. [2011 c 194 § 3; 1995 c 147 § 2; 1955 c 144 § 3.]

69.30.050 Shellfish growing areas—Requirements to harvest—Certificates of approval. (1) It is unlawful for a

person to harvest shellfish from shellfish growing areas in a commercial quantity or for sale for human consumption unless the shellfish growing area:

(a) Has a valid certificate of approval; and

(b) Meets the requirements of this chapter and the rules adopted under this chapter.

(2) A person may not remove shellfish in a commercial quantity or for sale for human consumption from a shellfish growing area in the state of Washington unless:

(a) The person has received a certificate of approval for the shellfish growing area from the department; and

(b) Approved shellfish tags are affixed to each container of shellstock prior to removal from the shellfish growing area, except bulk tagging is permitted as allowed in the national shellfish sanitation program model ordinance.

(3) Before issuing a certificate of approval, the department shall inspect the shellfish growing area. The department shall issue a certificate of approval if the area meets the requirements of this chapter and the rules adopted under this chapter.

(4) A certificate of approval is valid for a period of twelve months. The department may revoke a certificate of approval at any time the area is found out of compliance with the requirements of this chapter or the rules adopted under this chapter.

(5) It is unlawful to remove shellfish from shellfish growing areas without a certificate of approval in a commercial quantity for purposes other than human consumption, including but not limited to use as bait or seed, unless:

(a) The shellfish operation and shellfish growing area is readily available to monitoring and inspections; and

(b) The department has determined the shellfish operation is designed to ensure that shellfish harvested from such an area is not diverted for human consumption.

(6) Nothing in this section prohibits a person from removing shellfish for use as bait or seed from an approved shellfish growing area.

(7) The department's certificate of approval to harvest shellfish for purposes other than human consumption shall specify:

(a) The date or dates and time of harvest;

(b) All applicable conditions of harvest;

(c) Identification by tagging, dyeing, or other department-approved means; and

(d) Information about the removal method, transportation method, processing technique, sale details, and other factors to ensure that shellfish harvested from such areas are not diverted for human consumption. [2011 c 194 § 4; 1995 c 147 § 3; 1985 c 51 § 2; 1955 c 144 § 5.]

69.30.060 Certificates of approval—Culling, shucking, packing establishments. (1) It is unlawful for a person to cull, shuck, or pack shellfish in the state of Washington in a commercial quantity or for sale for human consumption unless the establishment in which such operations are conducted has been certified by the department as meeting the requirements of the state board of health.

(2) A person may not cull, shuck, or pack shellfish within the state of Washington in a commercial quantity or for sale for human consumption, unless the person has

received a certificate of approval from the department for the establishment in which such operations will be done.

(3) Before issuing a certificate of approval, the department shall inspect the establishment, and if the establishment meets the rules of the state board of health, the department shall issue a certificate of approval. Such certificates of approval shall be issued for a period not to exceed twelve months, and may be revoked at any time the establishment or the operations are found not to be in compliance with the rules of the state board of health. [2011 c 194 § 5; 1985 c 51 § 3; 1955 c 144 § 6.]

69.30.080 Licenses or certificates of approval—Department may deny, revoke, or suspend. (1) The department may deny, revoke, or suspend a person's license or certificate of approval for:

(a) Violations of this chapter or the rules adopted under this chapter; or

(b) Harassing or threatening an authorized representative of the department during the performance of his or her duties.

(2) RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [2011 c 194 § 6; 1991 c 3 § 304; 1989 c 175 § 125; 1979 c 141 § 71; 1955 c 144 § 8.]

Additional notes found at www.leg.wa.gov

69.30.085 License, certificate of approval—Denial, revocation, suspension—Prohibited acts—Penalties. (1) A person, or its director or officer, whose license or certificate of approval is denied, revoked, or suspended as a result of violations of this chapter or rules adopted under this chapter may not:

(a) Supervise, be employed by, or manage a shellfish operation licensed or certified under this chapter or rules adopted under this chapter;

(b) Participate in the harvesting, shucking, packing, or shipping of shellfish in commercial quantities or for sale;

(c) Participate in the brokering of shellfish, purchase of shellfish for resale, or retail sale of shellfish; or

(d) Engage in any activity associated with selling or offering to sell shellfish.

(2) Subsections (1)(c) and (d) of this section do not apply to retail purchases of shellfish for personal use.

(3) Subsection (1) of this section applies to a person only during the period of time in which that person's license or certificate of approval is denied, revoked, or suspended.

(4) Unlawful operations under subsection (1) of this section when a license or certificate of approval is denied, revoked, or suspended is a class C felony. Upon conviction, the department shall order that the person's license or certificate of approval be revoked for a period of at least five years, or that a person whose application for a license or certificate of approval was denied be ineligible to reapply for a period of at least five years.

(5) A license or certificate of approval issued under this chapter may not be assigned or transferred in any manner without department approval. [2011 c 194 § 7; 1998 c 44 § 1.]

69.30.110 Possession or sale in violation of chapter—Enforcement—Seizure—Disposal. (1) It is unlawful for any person to possess a commercial quantity of shellfish or to sell or offer to sell shellfish in the state which have not been grown, shucked, packed, or shipped in accordance with the provisions of this chapter. Failure of a shellfish grower to display a certificate of approval, or department-approved equivalent, issued under RCW 69.30.050 to an authorized representative of the department, a fish and wildlife officer, or an ex officio fish and wildlife officer subjects the grower to the penalty provisions of this chapter, as well as seizure and disposition, up to and including disposal, of the shellfish by the representative or officer.

(2) Failure of a shellfish processor to display a certificate of approval issued under RCW 69.30.060 to an authorized representative of the department, a fish and wildlife officer, or an ex officio fish and wildlife officer subjects the processor to the penalty provisions of this chapter, as well as seizure and disposition, up to and including disposal, of the shellfish by the representative or officer. [2011 c 194 § 8; 2001 c 253 § 6; 1995 c 147 § 4; 1985 c 51 § 4; 1979 c 141 § 74; 1955 c 144 § 11.]

69.30.140 Penalties. Except as provided in RCW 69.30.085(4), any person convicted of violating any of the provisions of this chapter shall be guilty of a gross misdemeanor. A conviction is an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this chapter or rules adopted under this chapter, regardless of whether imposition of sentence is deferred or the penalty is suspended, and shall be treated as a conviction for purposes of license revocation and suspension of privileges under *RCW 77.15.700(5). [2011 c 194 § 9; 2001 c 253 § 7; 1995 c 147 § 6; 1985 c 51 § 6; 1955 c 144 § 14.]

*Reviser's note: RCW 77.15.700 was amended by 2003 c 386 § 2, deleting subsection (5).

Chapter 69.41 RCW

LEGEND DRUGS—PRESCRIPTION DRUGS

Sections

69.41.030	Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions—Penalty.
69.41.190	Preferred drug substitution—Exceptions—Notice—Limited restrictions.

69.41.030 Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions—Penalty. (1) It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a

duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission, or any of the following professionals in any province of Canada that shares a common border with the state of Washington or in any state of the United States: A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, a licensed advanced registered nurse practitioner, or a veterinarian licensed to practice veterinary medicine: PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouse operator, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the health care authority from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners.

(2)(a) A violation of this section involving the sale, delivery, or possession with intent to sell or deliver is a class B felony punishable according to chapter 9A.20 RCW.

(b) A violation of this section involving possession is a misdemeanor. [2011 1st sp.s. c 15 § 79; 2011 c 336 § 837; 2010 c 83 § 1. Prior: 2003 c 142 § 3; 2003 c 53 § 323; 1996 c 178 § 17; 1994 sp.s. c 9 § 737; 1991 c 30 § 1; 1990 c 219 § 2; 1987 c 144 § 1; 1981 c 120 § 1; 1979 ex.s. c 139 § 2; 1977 c 69 § 1; 1973 1st ex.s. c 186 § 3.]

Reviser's note: This section was amended by 2011 c 336 § 837 and by 2011 1st sp.s. c 15 § 79, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Severability—2003 c 142: See note following RCW 18.53.010.

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

Finding—1990 c 219: "The legislature finds that Washington citizens in the border areas of this state are prohibited from having prescriptions from out-of-state dentists and veterinarians filled at their in-state pharmacies, and that it is in the public interest to remove this barrier for the state's citizens." [1990 c 219 § 1.]

Additional notes found at www.leg.wa.gov

69.41.190 Preferred drug substitution—Exceptions—Notice—Limited restrictions. (1)(a) Except as provided in subsection (2) of this section, any pharmacist filling a prescription under a state purchased health care program as defined in *RCW 41.05.011(2) shall substitute, where identified, a preferred drug for any nonpreferred drug in a given

therapeutic class, unless the endorsing practitioner has indicated on the prescription that the nonpreferred drug must be dispensed as written, or the prescription is for a refill of an antipsychotic, antidepressant, antiepileptic, chemotherapy, antiretroviral, or immunosuppressive drug, or for the refill of an immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks, in which case the pharmacist shall dispense the prescribed nonpreferred drug.

(b) When a substitution is made under (a) of this subsection, the dispensing pharmacist shall notify the prescribing practitioner of the specific drug and dose dispensed.

(2)(a) A state purchased health care program may impose limited restrictions on an endorsing practitioner's authority to write a prescription to dispense as written only under the following circumstances:

(i) There is statistical or clear data demonstrating the endorsing practitioner's frequency of prescribing dispensed as written for nonpreferred drugs varies significantly from the prescribing patterns of his or her peers;

(ii) The medical director of a state purchased health program has: (A) Presented the endorsing practitioner with data that indicates the endorsing practitioner's prescribing patterns vary significantly from his or her peers, (B) provided the endorsing practitioner an opportunity to explain the variation in his or her prescribing patterns to those of his or her peers, and (C) if the variation in prescribing patterns cannot be explained, provided the endorsing practitioner sufficient time to change his or her prescribing patterns to align with those of his or her peers; and

(iii) The restrictions imposed under (a) of this subsection (2) must be limited to the extent possible to reduce variation in prescribing patterns and shall remain in effect only until such time as the endorsing practitioner can demonstrate a reduction in variation in line with his or her peers.

(b) A state purchased health care program may immediately designate an available, less expensive, equally effective generic product in a previously reviewed drug class as a preferred drug, without first submitting the product to review by the pharmacy and therapeutics committee established pursuant to RCW 70.14.050.

(c) For a patient's first course of treatment within a therapeutic class of drugs, a state purchased health care program may impose limited restrictions on endorsing practitioners' authority to write a prescription to dispense as written, only under the following circumstances:

(i) There is a less expensive, equally effective therapeutic alternative generic product available to treat the condition;

(ii) The drug use review board established under WAC 388-530-4000 reviews and provides recommendations as to the appropriateness of the limitation;

(iii) Notwithstanding the limitation set forth in (c)(ii) of this subsection (2), the endorsing practitioner shall have an opportunity to request as medically necessary, that the brand name drug be prescribed as the first course of treatment;

(iv) The state purchased health care program may provide, where available, prescription, emergency room, diagnosis, and hospitalization history with the endorsing practitioner; and

(v) Specifically for antipsychotic restrictions, the state purchased health care program shall effectively guide good practice without interfering with the timeliness of clinical decision making. Health care authority prior authorization programs must provide for responses within twenty-four hours and at least a seventy-two hour emergency supply of the requested drug.

(d) If, within a therapeutic class, there is an equally effective therapeutic alternative over-the-counter drug available, a state purchased health care program may designate the over-the-counter drug as the preferred drug.

(e) A state purchased health care program may impose limited restrictions on endorsing practitioners' authority to prescribe pharmaceuticals to be dispensed as written for a purpose outside the scope of their approved labels only under the following circumstances:

(i) There is a less expensive, equally effective on-label product available to treat the condition;

(ii) The drug use review board established under WAC 388-530-4000 reviews and provides recommendations as to the appropriateness of the limitation; and

(iii) Notwithstanding the limitation set forth in (e)(ii) of this subsection (2), the endorsing practitioner shall have an opportunity to request as medically necessary, that the drug be prescribed for a covered off-label purpose.

(f) The provisions of this subsection related to the definition of medically necessary, prior authorization procedures and patient appeal rights shall be implemented in a manner consistent with applicable federal and state law.

(3) Notwithstanding the limitations in subsection (2) of this section, for refills for an antipsychotic, antidepressant, antiepileptic, chemotherapy, antiretroviral, or immunosuppressive drug, or for the refill of an immunomodulator antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks by no more than forty-eight weeks, the pharmacist shall dispense the prescribed nonpreferred drug. [2011 1st sp.s. c 15 § 80; 2009 c 575 § 1; 2006 c 233 § 1; 2003 1st sp.s. c 29 § 5.]

***Reviser's note:** RCW 41.05.011 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (2) to subsection (21).

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2009 c 575: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 575 § 2.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

Chapter 69.43 RCW PRECURSOR DRUGS

Sections

69.43.135 Iodine, methylsulfonylmethane—Sales restrictions—Recording of transactions—Penalties.

69.43.135 Iodine, methylsulfonylmethane—Sales restrictions—Recording of transactions—Penalties. (1)

The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Iodine matrix" means iodine at a concentration greater than two percent by weight in a matrix or solution.

(b) "Matrix" means something, as a substance, in which something else originates, develops, or is contained.

(c) "Methylsulfonylmethane" means methylsulfonylmethane in its powder form only, and does not include products containing methylsulfonylmethane in other forms such as liquids, tablets, capsules not containing methylsulfonylmethane in pure powder form, ointments, creams, cosmetics, foods, and beverages.

(2) Any person who knowingly purchases in a thirty-day period or possesses any quantity of iodine in its elemental form, an iodine matrix, or more than two pounds of methylsulfonylmethane is guilty of a gross misdemeanor, except as provided in subsection (3) of this section.

(3) Subsection (2) of this section does not apply to:

(a) A person who possesses iodine in its elemental form or an iodine matrix as a prescription drug, under a prescription issued by a licensed veterinarian, physician, or advanced registered nurse practitioner;

(b) A person who possesses iodine in its elemental form, an iodine matrix, or any quantity of methylsulfonylmethane in its powder form and is actively engaged in the practice of animal husbandry of livestock;

(c) A person who possesses iodine in its elemental form or an iodine matrix in conjunction with experiments conducted in a chemistry or chemistry-related laboratory maintained by a:

(i) Public or private secondary school;

(ii) Public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States department of education;

(iii) Manufacturing facility, government agency, or research facility in the course of lawful business activities;

(d) A veterinarian, physician, advanced registered nurse practitioner, pharmacist, retail distributor, wholesaler, manufacturer, warehouse operator, or common carrier, or an agent of any of these persons who possesses iodine in its elemental form, an iodine matrix, or methylsulfonylmethane in its powder form in the regular course of lawful business activities; or

(e) A person working in a general hospital who possesses iodine in its elemental form or an iodine matrix in the regular course of employment at the hospital.

(4) Any person who purchases any quantity of iodine in its elemental form, an iodine matrix, or any quantity of methylsulfonylmethane must present an identification card or driver's license issued by any state in the United States or jurisdiction of another country before purchasing the item.

(5) The Washington state patrol shall develop a form to be used in recording transactions involving iodine in its elemental form, an iodine matrix, or methylsulfonylmethane. A person who sells or otherwise transfers any quantity of iodine in its elemental form, an iodine matrix, or any quantity of methylsulfonylmethane to a person for any purpose authorized in subsection (3) of this section must record each sale or transfer. The record must be made on the form developed by the Washington state patrol and must be retained by the person for at least three years. The Washington state patrol or

any local law enforcement agency may request access to the records.

(a) Failure to make or retain a record required under this subsection is a misdemeanor.

(b) Failure to comply with a request for access to records required under this subsection to the Washington state patrol or a local law enforcement agency is a misdemeanor. [2011 c 336 § 838; 2006 c 188 § 1.]

Chapter 69.50 RCW

UNIFORM CONTROLLED SUBSTANCES ACT

Sections

69.50.302 Registration requirements.

69.50.302 Registration requirements. (a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, shall obtain annually a registration issued by the department in accordance with the board's rules.

(b) A person registered by the department under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by the registration and in conformity with this Article.

(c) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if the agent or employee is acting in the usual course of business or employment. This exemption shall not include any agent or employee distributing sample controlled substances to practitioners without an order;

(2) A common or contract carrier or warehouse operator, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a substance included in Schedule V.

(d) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers upon finding it consistent with the public health and safety. Personal practitioners licensed or registered in the state of Washington under the respective professional licensing acts shall not be required to be registered under this chapter unless the specific exemption is denied pursuant to RCW 69.50.305 for violation of any provisions of this chapter.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The department may inspect the establishment of a registrant or applicant for registration in accordance with rules adopted by the board. [2011 c 336 § 839; 1993 c 187 § 16; 1989 1st ex.s. c 9 § 432; 1971 ex.s. c 308 § 69.50.302.]

Additional notes found at www.leg.wa.gov

Chapter 69.51A RCW

MEDICAL CANNABIS

(Formerly: Medical marijuana)

Sections

69.51A.005	Purpose and intent.
69.51A.020	Construction of chapter.
69.51A.025	Construction of chapter—Compliance with RCW 69.51A.040.
69.51A.030	Acts not constituting crimes or unprofessional conduct—Health care professionals not subject to penalties or liabilities.
69.51A.040	Compliance with chapter—Qualifying patients and designated providers not subject to penalties—Law enforcement not subject to liability.
69.51A.043	Failure to register—Affirmative defense.
69.51A.045	Possession of cannabis exceeding lawful amount—Affirmative defense.
69.51A.047	Failure to register or present valid documentation—Affirmative defense.
69.51A.055	Limitations of chapter—Persons under supervision.
69.51A.060	Crimes—Limitations of chapter.
69.51A.080	Repealed.
69.51A.085	Collective gardens.
69.51A.100	Qualifying patient's designation of provider—Provider's service as designated provider—Termination.
69.51A.110	Suitability for organ transplant.
69.51A.120	Parental rights or residential time—Not to be restricted.
69.51A.130	State and municipalities—Not subject to liability.
69.51A.140	Counties, cities, towns—Authority to adopt and enforce requirements.
69.51A.200	Evaluation.
69.51A.900	Short title—1999 c 2.
69.51A.903	Severability—2011 c 181.

69.51A.005 Purpose and intent. (1) The legislature finds that:

(a) There is medical evidence that some patients with terminal or debilitating medical conditions may, under their health care professional's care, benefit from the medical use of cannabis. Some of the conditions for which cannabis appears to be beneficial include, but are not limited to:

(i) Nausea, vomiting, and cachexia associated with cancer, HIV-positive status, AIDS, hepatitis C, anorexia, and their treatments;

(ii) Severe muscle spasms associated with multiple sclerosis, epilepsy, and other seizure and spasticity disorders;

(iii) Acute or chronic glaucoma;

(iv) Crohn's disease; and

(v) Some forms of intractable pain.

(b) Humanitarian compassion necessitates that the decision to use cannabis by patients with terminal or debilitating medical conditions is a personal, individual decision, based upon their health care professional's professional medical judgment and discretion.

(2) Therefore, the legislature intends that:

(a) Qualifying patients with terminal or debilitating medical conditions who, in the judgment of their health care professionals, may benefit from the medical use of cannabis, shall not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law based solely on their medical use of cannabis, notwithstanding any other provision of law;

(b) Persons who act as designated providers to such patients shall also not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law, notwithstanding any other provision of law, based solely on their assisting with the medical use of cannabis; and

(c) Health care professionals shall also not be arrested, prosecuted, or subject to other criminal sanctions or civil con-

sequences under state law for the proper authorization of medical use of cannabis by qualifying patients for whom, in the health care professional's professional judgment, the medical use of cannabis may prove beneficial.

(3) Nothing in this chapter establishes the medical necessity or medical appropriateness of cannabis for treating terminal or debilitating medical conditions as defined in RCW 69.51A.010.

(4) Nothing in this chapter diminishes the authority of correctional agencies and departments, including local governments or jails, to establish a procedure for determining when the use of cannabis would impact community safety or the effective supervision of those on active supervision for a criminal conviction, nor does it create the right to any accommodation of any medical use of cannabis in any correctional facility or jail. [2011 c 181 § 102; 2010 c 284 § 1; 2007 c 371 § 2; 1999 c 2 § 2 (Initiative Measure No. 692, approved November 3, 1998).]

Intent—2007 c 371: "The legislature intends to clarify the law on medical marijuana so that the lawful use of this substance is not impaired and medical practitioners are able to exercise their best professional judgment in the delivery of medical treatment, qualifying patients may fully participate in the medical use of marijuana, and designated providers may assist patients in the manner provided by this act without fear of state criminal prosecution. This act is also intended to provide clarification to law enforcement and to all participants in the judicial system." [2007 c 371 § 1.]

69.51A.020 Construction of chapter. Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of cannabis for nonmedical purposes. Criminal penalties created under chapter 181, Laws of 2011 do not preclude the prosecution or punishment for other crimes, including other crimes involving the manufacture or delivery of cannabis for nonmedical purposes. [2011 c 181 § 103; 1999 c 2 § 3 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.025 Construction of chapter—Compliance with RCW 69.51A.040. Nothing in this chapter or in the rules adopted to implement it precludes a qualifying patient or designated provider from engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use as authorized under RCW 69.51A.040. [2011 c 181 § 413.]

69.51A.030 Acts not constituting crimes or unprofessional conduct—Health care professionals not subject to penalties or liabilities. (1) The following acts do not constitute crimes under state law or unprofessional conduct under chapter 18.130 RCW, and a health care professional may not be arrested, searched, prosecuted, disciplined, or subject to other criminal sanctions or civil consequences or liability under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, notwithstanding any other provision of law as long as the health care professional complies with subsection (2) of this section:

(a) Advising a patient about the risks and benefits of medical use of cannabis or that the patient may benefit from the medical use of cannabis; or

(b) Providing a patient meeting the criteria established under *RCW 69.51A.010(26) with valid documentation, based upon the health care professional's assessment of the

patient's medical history and current medical condition, where such use is within a professional standard of care or in the individual health care professional's medical judgment.

(2)(a) A health care professional may only provide a patient with valid documentation authorizing the medical use of cannabis or register the patient with the registry established in **section 901 of this act if he or she has a newly initiated or existing documented relationship with the patient, as a primary care provider or a specialist, relating to the diagnosis and ongoing treatment or monitoring of the patient's terminal or debilitating medical condition, and only after:

(i) Completing a physical examination of the patient as appropriate, based on the patient's condition and age;

(ii) Documenting the terminal or debilitating medical condition of the patient in the patient's medical record and that the patient may benefit from treatment of this condition or its symptoms with medical use of cannabis;

(iii) Informing the patient of other options for treating the terminal or debilitating medical condition; and

(iv) Documenting other measures attempted to treat the terminal or debilitating medical condition that do not involve the medical use of cannabis.

(b) A health care professional shall not:

(i) Accept, solicit, or offer any form of pecuniary remuneration from or to a licensed dispenser, licensed producer, or licensed processor of cannabis products;

(ii) Offer a discount or any other thing of value to a qualifying patient who is a customer of, or agrees to be a customer of, a particular licensed dispenser, licensed producer, or licensed processor of cannabis products;

(iii) Examine or offer to examine a patient for purposes of diagnosing a terminal or debilitating medical condition at a location where cannabis is produced, processed, or dispensed;

(iv) Have a business or practice which consists solely of authorizing the medical use of cannabis;

(v) Include any statement or reference, visual or otherwise, on the medical use of cannabis in any advertisement for his or her business or practice; or

(vi) Hold an economic interest in an enterprise that produces, processes, or dispenses cannabis if the health care professional authorizes the medical use of cannabis.

(3) A violation of any provision of subsection (2) of this section constitutes unprofessional conduct under chapter 18.130 RCW. [2011 c 181 § 301; 2010 c 284 § 3; 2007 c 371 § 4; 1999 c 2 § 4 (Initiative Measure No. 692, approved November 3, 1998).]

Reviser's note: *(1) RCW 69.51A.010(26) is a reference to the definition of "qualifying patient" which was amended and renumbered by 2011 c 181 § 201, but the section was vetoed by the governor.

** (2) The section creating a registry, 2011 c 181 § 901, was vetoed by the governor.

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.040 Compliance with chapter—Qualifying patients and designated providers not subject to penalties—Law enforcement not subject to liability. The medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime and a qualifying patient or designated provider in compliance with the terms and conditions of this chapter may not be arrested,

prosecuted, or subject to other criminal sanctions or civil consequences, for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, or have real or personal property seized or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, and investigating peace officers and law enforcement agencies may not be held civilly liable for failure to seize cannabis in this circumstance, if:

(1)(a) The qualifying patient or designated provider possesses no more than fifteen cannabis plants and:

(i) No more than twenty-four ounces of useable cannabis;

(ii) No more cannabis product than what could reasonably be produced with no more than twenty-four ounces of useable cannabis; or

(iii) A combination of useable cannabis and cannabis product that does not exceed a combined total representing possession and processing of no more than twenty-four ounces of useable cannabis.

(b) If a person is both a qualifying patient and a designated provider for another qualifying patient, the person may possess no more than twice the amounts described in (a) of this subsection, whether the plants, useable cannabis, and cannabis product are possessed individually or in combination between the qualifying patient and his or her designated provider;

(2) The qualifying patient or designated provider presents his or her proof of registration with the department of health, to any peace officer who questions the patient or provider regarding his or her medical use of cannabis;

(3) The qualifying patient or designated provider keeps a copy of his or her proof of registration with the registry established in *section 901 of this act and the qualifying patient or designated provider's contact information posted prominently next to any cannabis plants, cannabis products, or useable cannabis located at his or her residence;

(4) The investigating peace officer does not possess evidence that:

(a) The designated provider has converted cannabis produced or obtained for the qualifying patient for his or her own personal use or benefit; or

(b) The qualifying patient has converted cannabis produced or obtained for his or her own medical use to the qualifying patient's personal, nonmedical use or benefit;

(5) The investigating peace officer does not possess evidence that the designated provider has served as a designated provider to more than one qualifying patient within a fifteen-day period; and

(6) The investigating peace officer has not observed evidence of any of the circumstances identified in *section 901(4) of this act. [2011 c 181 § 401; 2007 c 371 § 5; 1999 c 2 § 5 (Initiative Measure No. 692, approved November 3, 1998).]

*Reviser's note: Section 901 of this act was vetoed by the governor.

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.043 Failure to register—Affirmative defense.

(1) A qualifying patient or designated provider who is not registered with the registry established in *section 901 of this

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act may raise the affirmative defense set forth in subsection (2) of this section, if:

(a) The qualifying patient or designated provider presents his or her valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis;

(b) The qualifying patient or designated provider possesses no more cannabis than the limits set forth in RCW 69.51A.040(1);

(c) The qualifying patient or designated provider is in compliance with all other terms and conditions of this chapter;

(d) The investigating peace officer does not have probable cause to believe that the qualifying patient or designated provider has committed a felony, or is committing a misdemeanor in the officer's presence, that does not relate to the medical use of cannabis;

(e) No outstanding warrant for arrest exists for the qualifying patient or designated provider; and

(f) The investigating peace officer has not observed evidence of any of the circumstances identified in *section 901(4) of this act.

(2) A qualifying patient or designated provider who is not registered with the registry established in *section 901 of this act, but who presents his or her valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis, may assert an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that he or she otherwise meets the requirements of RCW 69.51A.040. A qualifying patient or designated provider meeting the conditions of this subsection but possessing more cannabis than the limits set forth in RCW 69.51A.040(1) may, in the investigating peace officer's discretion, be taken into custody and booked into jail in connection with the investigation of the incident. [2011 c 181 § 402.]

*Reviser's note: Section 901 of this act was vetoed by the governor.

69.51A.045 Possession of cannabis exceeding lawful amount—Affirmative defense.

A qualifying patient or designated provider in possession of cannabis plants, useable cannabis, or cannabis product exceeding the limits set forth in RCW 69.51A.040(1) but otherwise in compliance with all other terms and conditions of this chapter may establish an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that the qualifying patient's necessary medical use exceeds the amounts set forth in RCW 69.51A.040(1). An investigating peace officer may seize cannabis plants, useable cannabis, or cannabis product exceeding the amounts set forth in RCW 69.51A.040(1): PROVIDED, That in the case of cannabis plants, the qualifying patient or designated provider shall be allowed to select the plants that will remain at the location. The officer and his or her law enforcement agency may not be held civilly liable for failure to seize cannabis in this circumstance. [2011 c 181 § 405.]

69.51A.047 Failure to register or present valid documentation—Affirmative defense.

A qualifying patient or

designated provider who is not registered with the registry established in *section 901 of this act or does not present his or her valid documentation to a peace officer who questions the patient or provider regarding his or her medical use of cannabis but is in compliance with all other terms and conditions of this chapter may establish an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that he or she was a validly authorized qualifying patient or designated provider at the time of the officer's questioning. A qualifying patient or designated provider who establishes an affirmative defense under the terms of this section may also establish an affirmative defense under RCW 69.51A.045. [2011 c 181 § 406.]

***Reviser's note:** The section creating a registry, 2011 c 181 § 901, was vetoed by the governor.

69.51A.055 Limitations of chapter—Persons under supervision. (1)(a) The arrest and prosecution protections established in RCW 69.51A.040 may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or jails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

(b) The affirmative defenses established in RCW 69.51A.043, 69.51A.045, 69.51A.047, and *section 407 of this act may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or jails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

(2) The provisions of RCW 69.51A.040, 69.51A.085, and 69.51A.025 do not apply to a person who is supervised for a criminal conviction by a corrections agency or department, including local governments or jails, that has determined that the terms of this chapter are inconsistent with and contrary to his or her supervision.

(3) A person may not be licensed as a licensed producer, licensed processor of cannabis products, or a licensed dispenser under *section 601, 602, or 701 of this act if he or she is supervised for a criminal conviction by a corrections agency or department, including local governments or jails, that has determined that licensure is inconsistent with and contrary to his or her supervision. [2011 c 181 § 1105.]

***Reviser's note:** Sections 407, 601, 602, and 701 were vetoed by the governor.

69.51A.060 Crimes—Limitations of chapter. (1) It shall be a class 3 civil infraction to use or display medical cannabis in a manner or place which is open to the view of the general public.

(2) Nothing in this chapter establishes a right of care as a covered benefit or requires any state purchased health care as defined in RCW 41.05.011 or other health carrier or health plan as defined in Title 48 RCW to be liable for any claim for reimbursement for the medical use of cannabis. Such entities may enact coverage or noncoverage criteria or related policies for payment or nonpayment of medical cannabis in their sole discretion.

(3) Nothing in this chapter requires any health care professional to authorize the medical use of cannabis for a patient.

(4) Nothing in this chapter requires any accommodation of any on-site medical use of cannabis in any place of employment, in any school bus or on any school grounds, in any youth center, in any correctional facility, or smoking cannabis in any public place or hotel or motel.

(5) Nothing in this chapter authorizes the use of medical cannabis by any person who is subject to the Washington code of military justice in chapter 38.38 RCW.

(6) Employers may establish drug-free work policies. Nothing in this chapter requires an accommodation for the medical use of cannabis if an employer has a drug-free work place.

(7) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under *RCW 69.51A.010(32)(a), or to backdate such documentation to a time earlier than its actual date of execution.

(8) No person shall be entitled to claim the protection from arrest and prosecution under RCW 69.51A.040 or the affirmative defense under RCW 69.51A.043 for engaging in the medical use of cannabis in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway, including violations of RCW 46.61.502 or 46.61.504, or equivalent local ordinances. [2011 c 181 § 501; 2010 c 284 § 4; 2007 c 371 § 6; 1999 c 2 § 8 (Initiative Measure No. 692, approved November 3, 1998).]

***Reviser's note:** RCW 69.51A.010(32) is a reference to the definition of "valid documentation" which was amended and renumbered by 2011 c 181 § 201, but the section was vetoed by the governor.

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.080 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

69.51A.085 Collective gardens. (1) Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:

(a) No more than ten qualifying patients may participate in a single collective garden at any time;

(b) A collective garden may contain no more than fifteen plants per patient up to a total of forty-five plants;

(c) A collective garden may contain no more than twenty-four ounces of useable cannabis per patient up to a total of seventy-two ounces of useable cannabis;

(d) A copy of each qualifying patient's valid documentation or proof of registration with the registry established in *section 901 of this act, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden; and

(e) No useable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden.

(2) For purposes of this section, the creation of a "collective garden" means qualifying patients sharing responsibility

for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.

(3) A person who knowingly violates a provision of subsection (1) of this section is not entitled to the protections of this chapter. [2011 c 181 § 403.]

***Reviser's note:** The section creating a registry, 2011 c 181 § 901, was vetoed by the governor.

69.51A.100 Qualifying patient's designation of provider—Provider's service as designated provider—Termination. (1) A qualifying patient may revoke his or her designation of a specific provider and designate a different provider at any time. A revocation of designation must be in writing, signed and dated. The protections of this chapter cease to apply to a person who has served as a designated provider to a qualifying patient seventy-two hours after receipt of that patient's revocation of his or her designation.

(2) A person may stop serving as a designated provider to a given qualifying patient at any time. However, that person may not begin serving as a designated provider to a different qualifying patient until fifteen days have elapsed from the date the last qualifying patient designated him or her to serve as a provider. [2011 c 181 § 404.]

69.51A.110 Suitability for organ transplant. A qualifying patient's medical use of cannabis as authorized by a health care professional may not be a sole disqualifying factor in determining the patient's suitability for an organ transplant, unless it is shown that this use poses a significant risk of rejection or organ failure. This section does not preclude a health care professional from requiring that a patient abstain from the medical use of cannabis, for a period of time determined by the health care professional, while waiting for a transplant organ or before the patient undergoes an organ transplant. [2011 c 181 § 408.]

69.51A.120 Parental rights or residential time—Not to be restricted. A qualifying patient or designated provider may not have his or her parental rights or residential time with a child restricted solely due to his or her medical use of cannabis in compliance with the terms of this chapter absent written findings supported by evidence that such use has resulted in a long-term impairment that interferes with the performance of parenting functions as defined under RCW 26.09.004. [2011 c 181 § 409.]

69.51A.130 State and municipalities—Not subject to liability. (1) No civil or criminal liability may be imposed by any court on the state or its officers and employees for actions taken in good faith under this chapter and within the scope of their assigned duties.

(2) No civil or criminal liability may be imposed by any court on cities, towns, and counties or other municipalities and their officers and employees for actions taken in good

faith under this chapter and within the scope of their assigned duties. [2011 c 181 § 1101.]

69.51A.140 Counties, cities, towns—Authority to adopt and enforce requirements. (1) Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. Nothing in chapter 181, Laws of 2011 is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.

(2) Counties may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction in locations outside of the corporate limits of any city or town: Zoning requirements, business licensing requirements, and health and safety requirements. Nothing in chapter 181, Laws of 2011 is intended to limit the authority of counties to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers. [2011 c 181 § 1102.]

69.51A.200 Evaluation. (1) By July 1, 2014, the Washington state institute for public policy shall, within available funds, conduct a cost-benefit evaluation of the implementation of chapter 181, Laws of 2011 and the rules adopted to carry out its purposes.

(2) The evaluation of the implementation of chapter 181, Laws of 2011 and the rules adopted to carry out its purposes shall include, but not necessarily be limited to, consideration of the following factors:

(a) Qualifying patients' access to an adequate source of cannabis for medical use;

(b) Qualifying patients' access to a safe source of cannabis for medical use;

(c) Qualifying patients' access to a consistent source of cannabis for medical use;

(d) Qualifying patients' access to a secure source of cannabis for medical use;

(e) Qualifying patients' and designated providers' contact with law enforcement and involvement in the criminal justice system;

(f) Diversion of cannabis intended for medical use to nonmedical uses;

(g) Incidents of home invasion burglaries, robberies, and other violent and property crimes associated with qualifying patients accessing cannabis for medical use;

(h) Whether there are health care professionals who make a disproportionately high amount of authorizations in comparison to the health care professional community at large;

(i) Whether there are indications of health care professionals in violation of RCW 69.51A.030; and

(j) Whether the health care professionals making authorizations reside in this state or out of this state.

(3) For purposes of facilitating this evaluation, the departments of health and agriculture will make available to the Washington state institute for public policy requested data, and any other data either department may consider relevant, from which all personally identifiable information has been redacted. [2011 c 181 § 1001.]

69.51A.900 Short title—1999 c 2. This chapter may be known and cited as the Washington state medical use of cannabis act. [2011 c 181 § 1106; 1999 c 2 § 1 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.903 Severability—2011 c 181. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [2011 c 181 § 1103.]

Title 70

PUBLIC HEALTH AND SAFETY

Chapters

- 70.01 General provisions.
- 70.02 Medical records—Health care information access and disclosure.
- 70.05 Local health departments, boards, officers—Regulations.
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Chapter 70.01 RCW GENERAL PROVISIONS

Sections

- 70.01.010 Cooperation with federal government—Construction.

70.01.010 Cooperation with federal government—Construction. In furtherance of the policy of this state to cooperate with the federal government in the public health programs, the department of health, the state board of health, and the health care authority shall adopt such rules as may become necessary to entitle this state to participate in federal funds unless expressly prohibited by law. Any section or provision of the public health laws of this state which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal funds for the various programs of public health. [2011 1st sp.s. c 15 § 81; 2011 c 27 § 3; 1985 c 213 § 14; 1969 ex.s. c 25 § 1; 1967 ex.s. c 102 § 12.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

Chapter 70.02 RCW MEDICAL RECORDS—HEALTH CARE INFORMATION ACCESS AND DISCLOSURE

Sections

- 70.02.900 Conflicting laws.

70.02.900 Conflicting laws. (1) This chapter does not restrict a health care provider, a third-party payor, or an insurer regulated under Title 48 RCW from complying with obligations imposed by federal or state health care payment programs or federal or state law.

(2) This chapter does not modify the terms and conditions of disclosure under Title 51 RCW and chapters 13.50, 26.09, 70.24, 70.96A, 71.05, 71.34, and 74.09 RCW and rules adopted under these provisions. [2011 c 305 § 10; 2000 c 5 § 4; 1991 c 335 § 901.]

Findings—2011 c 305: See note following RCW 74.09.295.

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Additional notes found at www.leg.wa.gov

Chapter 70.05 RCW

LOCAL HEALTH DEPARTMENTS, BOARDS,
OFFICERS—REGULATIONS

Sections

70.05.150 Contracts for sale or purchase of health services authorized.

70.05.150 Contracts for sale or purchase of health services authorized. In addition to powers already granted them, any county, district, or local health department may contract for either the sale or purchase of any or all health services from any local health department. [2011 c 27 § 4; 1993 c 492 § 243; 1967 ex.s. c 51 § 22.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

Chapter 70.24 RCW

CONTROL AND TREATMENT OF
SEXUALLY TRANSMITTED DISEASES

Sections

70.24.105 Disclosure of HIV antibody test or testing or treatment of sexually transmitted diseases—Exchange of medical information.

70.24.340 Convicted persons—Mandatory testing and counseling for certain offenses—Employees' substantial exposure to bodily fluids—Procedure and court orders.

70.24.105 Disclosure of HIV antibody test or testing or treatment of sexually transmitted diseases—Exchange of medical information. (1) No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease, except as authorized by this chapter.

(2) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV antibody test is performed, or the results of such a test, nor may the result of a test for any other sexually transmitted disease when it is positive be disclosed. This protection against disclosure of test subject, diagnosis, or treatment also applies to any information relating to diagnosis of or treatment for HIV infection and for any other confirmed sexually transmitted disease. The following persons, however, may receive such information:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(b) Any person who secures a specific release of test results or information relating to HIV or confirmed diagnosis of or treatment for any other sexually transmitted disease executed by the subject or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(c) The state public health officer, a local public health officer, or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(d) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(e) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, provided that such record was obtained by means of court ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(f) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure shall: (i) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services, including but not limited to the written statement set forth in subsection (5) of this section;

(g) Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

(h) A law enforcement officer, firefighter, health care provider, health care facility staff person, department of correction's staff person, jail staff person, or other persons as defined by the board in rule pursuant to RCW 70.24.340(4), who has requested a test of a person whose bodily fluids he or she has been substantially exposed to, pursuant to RCW 70.24.340(4), if a state or local public health officer performs the test. If the requestor also requested that testing for blood-borne pathogens be conducted pursuant to RCW 70.24.340 and the state health or local health officer performs the tests, the requestor must also be informed of the results of those tests;

(i) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state-administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection shall be confidential and shall not be released or available to persons who are not involved in handling or determining medical claims payment; and

(j) A department of social and health services worker, a child placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a

child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of social and health services or a licensed child placing agency; this information may also be received by a person responsible for providing residential care for such a child when the department of social and health services or a licensed child placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender or detained person, except as provided in subsection (2)(e) of this section, shall be governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by department of corrections health care providers and local public health officers to the department of corrections health care administrator or infection control coordinator of the facility in which the offender is housed. The information made available to the health care administrator or the infection control coordinator under this subsection (4)(a) shall be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of corrections' jurisdiction according to the provisions of (d) and (e) of this subsection.

(b) The sexually transmitted disease status of a person detained in a jail who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by the local public health officer to a jail health care administrator or infection control coordinator. The information made available to a health care administrator under this subsection (4)(b) shall be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, detainees, and the public. The information may be submitted to transporting officers and receiving facilities according to the provisions of (d) and (e) of this subsection.

(c) Information regarding the sexually transmitted disease status of an offender or detained person is confidential and may be disclosed by a correctional health care administrator or infection control coordinator or local jail health care administrator or infection control coordinator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080 or any other penalties as may be prescribed by law.

(d) Notwithstanding the limitations on disclosure contained in (a), (b), and (c) of this subsection, whenever any member of a jail staff or department of corrections staff has been substantially exposed to the bodily fluids of an offender or detained person, then the results of any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370,

shall be immediately disclosed to the staff person in accordance with the Washington Administrative Code rules governing employees' occupational exposure to bloodborne pathogens. Disclosure must be accompanied by appropriate counseling for the staff member, including information regarding follow-up testing and treatment. Disclosure shall also include notice that subsequent disclosure of the information in violation of this chapter or use of the information to harass or discriminate against the offender or detainee may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080, and imposition of other penalties prescribed by law.

(e) The staff member shall also be informed whether the offender or detained person had any other communicable disease, as defined in RCW 72.09.251(3), when the staff person was substantially exposed to the offender's or detainee's bodily fluids.

(f) The test results of voluntary and anonymous HIV testing or HIV-related condition may not be disclosed to a staff person except as provided in subsection (2)(h) of this section and RCW 70.24.340(4). A health care administrator or infection control coordinator may provide the staff member with information about how to obtain the offender's or detainee's test results under subsection (2)(h) of this section and RCW 70.24.340(4).

(5) Whenever disclosure is made pursuant to this section, except for subsections (2)(a) and (6) of this section, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied or followed by such a notice within ten days.

(6) The requirements of this section shall not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor shall they apply within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

(7) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter 9A.44 RCW shall be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. Such disclosure shall be accompanied by appropriate counseling, including information regarding follow-up testing. [2011 c 232 § 1. Prior: 1997 c 345 § 2; 1997 c 196 § 6; 1994 c 72 § 1; 1989 c 123 § 1; 1988 c 206 § 904.]

Findings—Intent—1997 c 345: "(1) The legislature finds that department of corrections staff and jail staff perform essential public functions that are vital to our communities. The health and safety of these workers is often placed in jeopardy while they perform the responsibilities of their jobs. Therefore, the legislature intends that the results of any HIV tests conducted on an offender or detainee pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be disclosed to the health care administrator or infection control coordinator of the department of corrections facility or the local jail that houses the offender or detainee. The legislature intends that these test results also be disclosed to any corrections or jail staff who have been substantially exposed to the bodily fluids of the offender or detainee when the disclosure

is provided by a licensed health care provider in accordance with Washington Administrative Code rules governing employees' occupational exposure to bloodborne pathogens.

(2) The legislature further finds that, through the efforts of health care professionals and corrections staff, offenders in department of corrections facilities and people detained in local jails are being encouraged to take responsibility for their health by requesting voluntary and anonymous pretest counseling, HIV testing, posttest counseling, and AIDS counseling. The legislature does not intend, through chapter 345, Laws of 1997, to mandate disclosure of the results of voluntary and anonymous tests. The legislature intends to continue to protect the confidential exchange of medical information related to voluntary and anonymous pretest counseling, HIV testing, posttest counseling, and AIDS counseling as provided by chapter 70.24 RCW." [1997 c 345 § 1.]

70.24.340 Convicted persons—Mandatory testing and counseling for certain offenses—Employees' substantial exposure to bodily fluids—Procedure and court orders. (1) Local health departments authorized under this chapter shall conduct or cause to be conducted pretest counseling, HIV testing, and posttest counseling of all persons:

(a) Convicted of a sexual offense under chapter 9A.44 RCW;

(b) Convicted of prostitution or offenses relating to prostitution under chapter 9A.88 RCW; or

(c) Convicted of drug offenses under chapter 69.50 RCW if the court determines at the time of conviction that the related drug offense is one associated with the use of hypodermic needles.

(2) Such testing shall be conducted as soon as possible after sentencing and shall be so ordered by the sentencing judge.

(3) This section applies only to offenses committed after March 23, 1988.

(4) A law enforcement officer, firefighter, health care provider, health care facility staff person, department of corrections' staff person, jail staff person, or other categories of employment determined by the board in rule to be at risk of substantial exposure to HIV, who has experienced a substantial exposure to another person's bodily fluids in the course of his or her employment, may request a state or local public health officer to order pretest counseling, HIV testing, and posttest counseling for the person whose bodily fluids he or she has been exposed to. A person eligible to request a state or local health official to order HIV testing under this chapter and board rule may also request a state or local health officer to order testing for other bloodborne pathogens. If the state or local public health officer refuses to order counseling and testing under this subsection, the person who made the request may petition the superior court for a hearing to determine whether an order shall be issued. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review to determine whether the public health officer shall be required to issue the order is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as defined by the board by rule. Upon conclusion of the hearing, the court shall issue the appropriate order, which may require additional testing for other bloodborne pathogens.

The person who is subject to the state or local public health officer's order to receive counseling and testing shall be given written notice of the order promptly, personally, and

confidentially, stating the grounds and provisions of the order, including the factual basis therefor. If the person who is subject to the order refuses to comply, the state or local public health officer may petition the superior court for a hearing. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review for the order is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as defined by the board by rule. Upon conclusion of the hearing, the court shall issue the appropriate order.

The state or local public health officer shall perform counseling and testing under this subsection if he or she finds that the exposure was substantial and presents a possible risk as defined by the board of health by rule or if he or she is ordered to do so by a court.

The counseling and testing required under this subsection shall be completed as soon as possible after the substantial exposure or after an order is issued by a court, but shall begin not later than seventy-two hours after the substantial exposure or an order is issued by the court. [2011 c 232 § 2; 1997 c 345 § 3; 1988 c 206 § 703.]

Findings—Intent—1997 c 345: See note following RCW 70.24.105.

Chapter 70.41 RCW

HOSPITAL LICENSING AND REGULATION

Sections

70.41.130 Denial, suspension, revocation, modification of license—Procedure.

70.41.130 Denial, suspension, revocation, modification of license—Procedure. The department is authorized to deny, suspend, revoke, or modify a license or provisional license in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards or rules adopted under this chapter or the requirements of RCW 71.34.375. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [2011 c 302 § 3; 1991 c 3 § 335; 1989 c 175 § 128; 1985 c 213 § 22; 1955 c 267 § 13.]

Additional notes found at www.leg.wa.gov

Chapter 70.44 RCW

PUBLIC HOSPITAL DISTRICTS

Sections

70.44.060 Powers and duties.
70.44.460 Rural public hospital district defined.

70.44.060 Powers and duties. All public hospital districts organized under the provisions of this chapter shall have power:

(1) To make a survey of existing hospital and other health care facilities within and without such district.

(2) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital and other health care facilities and sys-

tems for the maintenance of hospitals, buildings, structures, and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and instituted pursuant to a resolution of the commission and conducted in the same manner and by the same procedure as in or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: PROVIDED, That no public hospital district shall have the right of eminent domain and the power of condemnation against any health care facility.

(3) To lease existing hospital and other health care facilities and equipment and/or other property used in connection therewith, including ambulances, and to pay such rental therefor as the commissioners shall deem proper; to provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospitals and other health care facilities and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper: PROVIDED, That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district, at rates set by the district commissioners.

(4) For the purpose aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, including state and county lands, for any of the purposes aforesaid, and any and all other facilities necessary or convenient, and in connection with the construction, maintenance, and operation of any such hospitals and other health care facilities, subject, however, to the applicable limitations provided in subsection (2) of this section.

(5) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, and to issue and sell: (a) Revenue bonds, revenue warrants, or other revenue obligations therefor payable solely out of a special fund or funds into which the district may pledge such amount of the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, to pay the same as the commissioners of the district may determine, such revenue bonds, warrants, or other obligations to be issued and sold in the same manner and subject to the same provisions as provided for the issuance of revenue bonds, warrants, or other obligations by cities or towns under the municipal revenue bond act, chapter 35.41 RCW, as may hereafter be amended; (b) general obligation bonds therefor in the manner and form as provided in RCW 70.44.110 and 70.44.130, as may hereafter be amended; or (c) interest-bearing warrants to be drawn on a

fund pending deposit in such fund of money sufficient to redeem such warrants and to be issued and paid in such manner and upon such terms and conditions as the board of commissioners may deem to be in the best interest of the district; and to assign or sell hospital accounts receivable, and accounts receivable for the use of other facilities or services that the district is or hereafter may be authorized by law to provide, for collection with or without recourse. General obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. Revenue bonds, revenue warrants, or other revenue obligations may be issued and sold in accordance with chapter 39.46 RCW. In connection with the issuance of bonds, a public hospital district is, in addition to its other powers, authorized to grant a lien on any or all of its property, whether then owned or thereafter acquired, including the revenues and receipts from the property, pursuant to a mortgage, deed of trust, security agreement, or any other security instrument now or hereafter authorized by applicable law: PROVIDED, That such bonds are issued in connection with a federal program providing mortgage insurance, including but not limited to the mortgage insurance programs administered by the United States department of housing and urban development pursuant to sections 232, 241, and 242 of Title II of the national housing act, as amended.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed fifty cents per thousand dollars of assessed value, and an additional annual tax on all taxable property within such public hospital district not to exceed twenty-five cents per thousand dollars of assessed value, or such further amount as has been or shall be authorized by a vote of the people. Although public hospital districts are authorized to impose two separate regular property tax levies, the levies shall be considered to be a single levy for purposes of the limitation provided for in chapter 84.55 RCW. Public hospital districts are authorized to levy such a general tax in excess of their regular property taxes when authorized so to do at a special election conducted in accordance with and subject to all of the requirements of the Constitution and the laws of the state of Washington now in force or hereafter enacted governing the limitation of tax levies. The said board of district commissioners is authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition or propositions to levy taxes in excess of its regular property taxes. The superintendent shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file the same in the records of the commission on or before the first day of November. Notice of the filing of said proposed budget and the date and place of hearing on the same shall be published for at least two consecutive weeks, at least one time each week, in a newspaper printed and of general circulation in said county. On or before the fifteenth day of November the commission shall hold a public hearing on said proposed budget at which any taxpayer may appear and be heard against the whole or any part of the proposed budget. Upon the conclusion of said hearing, the commission shall, by resolution, adopt the budget as finally determined and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper county officer of the county in which such public

hospital district is located in the same manner as is or may be provided by law for the certification and collection of port district taxes. The commission is authorized, prior to the receipt of taxes raised by levy, to borrow money or issue warrants of the district in anticipation of the revenue to be derived by such district from the levy of taxes for the purpose of such district, and such warrants shall be redeemed from the first money available from such taxes when collected, and such warrants shall not exceed the anticipated revenues of one year, and shall bear interest at a rate or rates as authorized by the commission.

(7) To enter into any contract with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out any of the powers authorized by this chapter.

(8) To sue and be sued in any court of competent jurisdiction: PROVIDED, That all suits against the public hospital district shall be brought in the county in which the public hospital district is located.

(9) To pay actual necessary travel expenses and living expenses incurred while in travel status for (a) qualified physicians or other health care practitioners who are candidates for medical staff positions, and (b) other qualified persons who are candidates for superintendent or other managerial and technical positions, which expenses may include expenses incurred by family members accompanying the candidate, when the district finds that hospitals or other health care facilities owned and operated by it are not adequately staffed and determines that personal interviews with said candidates to be held in the district are necessary or desirable for the adequate staffing of said facilities.

(10) To employ superintendents, attorneys, and other technical or professional assistants and all other employees; to make all contracts useful or necessary to carry out the provisions of this chapter, including, but not limited to, (a) contracts with private or public institutions for employee retirement programs, and (b) contracts with current or prospective employees, physicians, or other health care practitioners providing for the payment or reimbursement by the public hospital district of health care training or education expenses, including but not limited to debt obligations, incurred by current or prospective employees, physicians, or other health care practitioners in return for their agreement to provide services beneficial to the public hospital district; to print and publish information or literature; and to do all other things necessary to carry out the provisions of this chapter.

(11) To solicit and accept gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise, and to sell, lease, exchange, invest, or expend gifts or the proceeds, rents, profits, and income therefrom, and to enter into contracts with for-profit or nonprofit organizations to support the purposes of this subsection, including, but not limited to, contracts providing for the use of district facilities, property, personnel, or services. [2011 c 37 § 1; 2010 c 95 § 1; 2003 c 125 § 1; 2001 c 76 § 1; 1997 c 3 § 206 (Referendum Bill No. 47, approved November 4, 1997); 1990 c 234 § 2; 1984 c 186 § 59; 1983 c 167 § 172; 1982 c 84 § 15; 1979 ex.s. c 155 § 1; 1979 ex.s. c 143 § 4; 1977 ex.s. c 211 § 1; 1974 ex.s. c 165 § 2; 1973 1st ex.s. c 195 § 83; 1971 ex.s. c 218 § 2; 1970 ex.s. c 56 § 85; 1969 ex.s. c

65 § 1; 1967 c 164 § 7; 1965 c 157 § 2; 1949 c 197 § 18; 1945 c 264 § 6; Rem. Supp. 1949 § 6090-35.]

Intent—1997 c 3 §§ 201-207: See note following RCW 84.55.010.

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

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

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Eminent domain

by cities: Chapter 8.12 RCW.

generally: State Constitution Art. 1 § 16.

Limitation on levies: State Constitution Art. 7 § 2; RCW 84.52.050.

Port districts, collection of taxes: RCW 53.36.020.

Tortious conduct of political subdivisions, municipal corporations and quasi-municipal corporations, liability for damages: Chapter 4.96 RCW.

Additional notes found at www.leg.wa.gov

70.44.460 Rural public hospital district defined.

Unless the context clearly requires otherwise, the definition in this section applies throughout RCW 70.44.450.

"Rural public hospital district" means a public hospital district authorized under chapter 70.44 RCW whose geographic boundaries do not include a city with a population greater than fifty thousand. [2011 c 95 § 1; 1992 c 161 § 2.]

Intent—1992 c 161: See note following RCW 70.44.450.

Chapter 70.47 RCW

BASIC HEALTH PLAN— HEALTH CARE ACCESS ACT

Sections

70.47.010	Legislative findings—Purpose—Director to coordinate eligibility.
70.47.020	Definitions (<i>as amended by 2011 c 284</i>).
70.47.020	Definitions (<i>as amended by 2011 1st sp.s. c 9</i>).
70.47.020	Definitions (<i>as amended by 2011 1st sp.s. c 15</i>).
70.47.060	Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment.
70.47.0601	Income determination—Unemployment compensation.
70.47.100	Participation by a managed health care system. (<i>Expiration of subsections.</i>)
70.47.110	Enrollment of medical assistance recipients.
70.47.230	Payments to nonparticipating providers. (<i>Expires July 1, 2016.</i>)

70.47.010 Legislative findings—Purpose—Director to coordinate eligibility. (1)(a) The legislature finds that limitations on access to health care services for enrollees in the state, such as in rural and underserved areas, are particularly challenging for the basic health plan. Statutory restrictions have reduced the options available to the director to address the access needs of basic health plan enrollees. It is the intent of the legislature to authorize the director to develop alternative purchasing strategies to ensure access to basic health plan enrollees in all areas of the state, including: (i) The use of differential rating for managed health care systems based on geographic differences in costs; and (ii) limited use of self-insurance in areas where adequate access cannot be assured through other options.

(b) In developing alternative purchasing strategies to address health care access needs, the director shall consult with interested persons including health carriers, health care providers, and health facilities, and with other appropriate state agencies including the office of the insurance commis-

sioner and the office of community and rural health. In pursuing such alternatives, the director shall continue to give priority to prepaid managed care as the preferred method of assuring access to basic health plan enrollees followed, in priority order, by preferred providers, fee for service, and self-funding.

(2) The legislature further finds that:

(a) A significant percentage of the population of this state does not have reasonably available insurance or other coverage of the costs of necessary basic health care services;

(b) This lack of basic health care coverage is detrimental to the health of the individuals lacking coverage and to the public welfare, and results in substantial expenditures for emergency and remedial health care, often at the expense of health care providers, health care facilities, and all purchasers of health care, including the state; and

(c) The use of managed health care systems has significant potential to reduce the growth of health care costs incurred by the people of this state generally, and by low-income pregnant women, and at-risk children and adolescents who need greater access to managed health care.

(3) The purpose of this chapter is to provide or make more readily available necessary basic health care services in an appropriate setting to working persons and others who lack coverage, at a cost to these persons that does not create barriers to the utilization of necessary health care services. To that end, this chapter establishes a program to be made available to those residents not eligible for medicare who share in a portion of the cost or who pay the full cost of receiving basic health care services from a managed health care system.

(4) It is not the intent of this chapter to provide health care services for those persons who are presently covered through private employer-based health plans, nor to replace employer-based health plans. However, the legislature recognizes that cost-effective and affordable health plans may not always be available to small business employers. Further, it is the intent of the legislature to expand, wherever possible, the availability of private health care coverage and to discourage the decline of employer-based coverage.

(5)(a) It is the purpose of this chapter to acknowledge the initial success of this program that has (i) assisted thousands of families in their search for affordable health care; (ii) demonstrated that low-income, uninsured families are willing to pay for their own health care coverage to the extent of their ability to pay; and (iii) proved that local health care providers are willing to enter into a public-private partnership as a managed care system.

(b) As a consequence, the legislature intends to extend an option to enroll to certain citizens above two hundred percent of the federal poverty guidelines within the state who reside in communities where the plan is operational and who collectively or individually wish to exercise the opportunity to purchase health care coverage through the basic health plan if the purchase is done at no cost to the state. It is also the intent of the legislature to allow employers and other financial sponsors to financially assist such individuals to purchase health care through the program so long as such purchase does not result in a lower standard of coverage for employees.

(c) The legislature intends that, to the extent of available funds, the program be available throughout Washington state

to subsidized and nonsubsidized enrollees. It is also the intent of the legislature to enroll subsidized enrollees first, to the maximum extent feasible.

(d) The legislature directs that the basic health plan director identify enrollees who are likely to be eligible for medical assistance and assist these individuals in applying for and receiving medical assistance. Enrollees receiving medical assistance are not eligible for the Washington basic health plan. [2011 1st sp.s. c 15 § 82; 2009 c 568 § 1; 2000 c 79 § 42; 1993 c 492 § 208; 1987 1st ex.s. c 5 § 3.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

70.47.020 Definitions (as amended by 2011 c 284). As used in this chapter:

(1) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(2) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from the pension benefit guaranty corporation and are at least fifty-five years old.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under *RCW 70.47.100(7).

(5) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who is accepted for enrollment by the administrator as provided in RCW 48.43.018, either because the potential enrollee cannot be required to complete the standard health questionnaire under RCW 48.43.018, or, based upon the results of the standard health questionnaire, the potential enrollee would not qualify for coverage under the Washington state health insurance pool; (d) who resides in an area of the state served by a managed health care system participating in the plan; (e) who chooses to obtain basic health care coverage from a particular managed health care system; and (f) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(6) "Premium" means a periodic payment, which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

(7) "Rate" means the amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees in the plan and in that system.

(8) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(9) "Subsidized enrollee" means:

(a) An individual, or an individual plus the individual's spouse or dependent children:

(i) Who is not eligible for medicare;

(ii) Who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;

(iii) Who is not a full-time student who has received a temporary visa to study in the United States;

(iv) Who resides in an area of the state served by a managed health care system participating in the plan;

(v) Whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services;

(vi) Who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan; and

(vii) Who is not receiving ~~(medical assistance administered by the department of social and health services)~~ or has not been determined to be currently eligible for federally financed categorically needy or medically needy programs under chapter 74.09 RCW, except as provided under RCW 70.47.110;

(b) An individual who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and who is a foster parent licensed under chapter 74.15 RCW and whose gross family income at the time of enrollment does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, an individual, or an individual's spouse or dependent children, who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(10) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter. [2011 c 284 § 1. Prior: 2009 c 568 § 2; 2007 c 259 § 35; 2005 c 188 § 2; 2004 c 192 § 1; 2000 c 79 § 43; 1997 c 335 § 1; 1997 c 245 § 5; prior: 1995 c 266 § 2; 1995 c 2 § 3; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

*Reviser's note: RCW 70.47.100 was amended by 2011 1st sp.s. c 9 § 4, changing subsection (7) to subsection (9).

70.47.020 Definitions (as amended by 2011 1st sp.s. c 9). As used in this chapter:

(1) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(2) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from the pension benefit guaranty corporation and are at least fifty-five years old.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100~~((7))~~ (9).

(5) "Nonparticipating provider" means a person, health care provider, practitioner, facility, or entity, acting within their authorized scope of practice or licensure, that does not have a written contract to participate in a managed health care system's provider network, but provides services to plan enrollees who receive coverage through the managed health care system.

(6) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the adminis-

trator; (c) who is accepted for enrollment by the administrator as provided in RCW 48.43.018, either because the potential enrollee cannot be required to complete the standard health questionnaire under RCW 48.43.018, or, based upon the results of the standard health questionnaire, the potential enrollee would not qualify for coverage under the Washington state health insurance pool; (d) who resides in an area of the state served by a managed health care system participating in the plan; (e) who chooses to obtain basic health care coverage from a particular managed health care system; and (f) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

~~((6))~~ (7) "Premium" means a periodic payment, which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

~~((7))~~ (8) "Rate" means the amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees in the plan and in that system.

~~((8))~~ (9) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

~~((9))~~ (10) "Subsidized enrollee" means:

(a) An individual, or an individual plus the individual's spouse or dependent children:

(i) Who is not eligible for medicare;

(ii) Who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;

(iii) Who is not a full-time student who has received a temporary visa to study in the United States;

(iv) Who resides in an area of the state served by a managed health care system participating in the plan;

(v) Until March 1, 2011, whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services;

(vi) Who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan;

(vii) Who is not receiving medical assistance administered by the department of social and health services; and

(viii) After February 28, 2011, who is in the basic health transition eligibles population under 1115 medicaid demonstration project number 11-W-00254/10;

(b) An individual who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and who is a foster parent licensed under chapter 74.15 RCW and whose gross family income at the time of enrollment does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, an individual, or an individual's spouse or dependent children, who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

~~((4))~~ (11) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter. [2011 1st sp.s. c 9 § 3. Prior: 2011 c 205 § 1; prior: 2009 c 568 § 2; 2007 c 259 § 35; 2005 c 188 § 2; 2004 c 192 § 1; 2000 c 79 § 43; 1997 c 335 § 1; 1997 c 245 § 5; prior: 1995 c 266 § 2; 1995 c 2 § 3; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

Findings—Intent—2011 1st sp.s. c 9: "(1) The legislature finds that:

(a) There is an increasing level of dispute and uncertainty regarding the amount of payment nonparticipating providers may receive for health care services provided to enrollees of state purchased health care programs designed to serve low-income individuals and families, such as basic health and the medicaid managed care programs;

(b) The dispute has resulted in litigation, including a recent Washington superior court ruling that determined nonparticipating providers were entitled to receive billed charges from a managed health care system for services provided to medicaid and basic health plan enrollees. The decision would allow a nonparticipating provider to demand and receive payment in

an amount exceeding the payment managed health care system network providers receive for the same services. Similar provider lawsuits have now been filed in other jurisdictions in the state;

(c) In the biennial operating budget, the legislature has previously indicated its intent that payment to nonparticipating providers for services provided to medicaid managed care enrollees should be limited to amounts paid to medicaid fee-for-service providers. The duration of these provisions is limited to the period during which the operating budget is in effect. A more permanent resolution of these issues is needed; and

(d) Continued failure to resolve this dispute will have adverse impacts on state purchased health care programs serving low-income enrollees, including: (i) Diminished ability for the state to negotiate cost-effective contracts with managed health care systems; (ii) a potential for significant reduction in the willingness of providers to participate in managed health care system provider networks; (iii) a reduction in providers participating in the managed health care systems; and (iv) increased exposure for program enrollees to balance billing practices by nonparticipating providers. Ultimately, fewer eligible people will get the care they need as state purchased health care programs will operate with less efficiency and reduced access to cost-effective and quality health care coverage for program enrollees.

(2) It is the intent of the legislature to create a legislative solution that reduces the cost borne by the state to provide public health care coverage to low-income enrollees in managed health care systems, protects enrollees and state purchased health care programs from balance billing by nonparticipating providers, provides appropriate payment to health care providers for services provided to enrollees of state purchased health care programs, and limits the risk for managed health care systems that contract with the state programs." [2011 1st sp.s. c 9 § 1.]

70.47.020 Definitions (as amended by 2011 1st sp.s. c 15). As used in this chapter:

(1) ("~~Administrator~~" means the Washington basic health plan administrator, who also holds the position of administrator)) "Director" means the director of the Washington state health care authority.

(2) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from the pension benefit guaranty corporation and are at least fifty-five years old.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the ((~~administrator~~)) director and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under *RCW 70.47.100(7).

(5) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the ((~~administrator~~)) director; (c) who is accepted for enrollment by the ((~~administrator~~)) director as provided in RCW 48.43.018, either because the potential enrollee cannot be required to complete the standard health questionnaire under RCW 48.43.018, or, based upon the results of the standard health questionnaire, the potential enrollee would not qualify for coverage under the Washington state health insurance pool; (d) who resides in an area of the state served by a managed health care system participating in the plan; (e) who chooses to obtain basic health care coverage from a particular managed health care system; and (f) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(6) "Premium" means a periodic payment, which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

(7) "Rate" means the amount, negotiated by the ((~~administrator~~)) director with and paid to a participating managed health care system, that is based

upon the enrollment of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees in the plan and in that system.

(8) "Subsidy" means the difference between the amount of periodic payment the ((~~administrator~~)) director makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(9) "Subsidized enrollee" means:

(a) An individual, or an individual plus the individual's spouse or dependent children:

(i) Who is not eligible for medicare;

(ii) Who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the ((~~administrator~~)) director;

(iii) Who is not a full-time student who has received a temporary visa to study in the United States;

(iv) Who resides in an area of the state served by a managed health care system participating in the plan;

(v) Until March 1, 2011, whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services;

(vi) Who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan;

(vii) Who is not receiving medical assistance administered by the ((~~department of social and health services~~)) authority; and

(viii) After February 28, 2011, who is in the basic health transition eligible population under 1115 medicaid demonstration project number 11-W-00254/10;

(b) An individual who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and who is a foster parent licensed under chapter 74.15 RCW and whose gross family income at the time of enrollment does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, an individual, or an individual's spouse or dependent children, who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(10) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan ((~~administrator~~)) director through participating managed health care systems, created by this chapter. [2011 1st sp.s. c 15 § 83; 2011 c 205 § 1; 2009 c 568 § 2; 2007 c 259 § 35; 2005 c 188 § 2; 2004 c 192 § 1; 2000 c 79 § 43; 1997 c 335 § 1; 1997 c 245 § 5. Prior: 1995 c 266 § 2; 1995 c 2 § 3; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

Reviser's note: *(1) RCW 70.47.100 was amended by 2011 1st sp.s. c 9 § 4, changing subsection (7) to subsection (9).

(2) RCW 70.47.020 was amended three times during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Intent—2011 c 205: "The legislature intends to define eligibility for the basic health plan for periods subsequent to expiration of the 1115 medicaid demonstration project based upon recommendations from its joint select committee on health reform regarding whether the basic health plan should be offered as an enrollment option for persons who qualify for federal premium subsidies under the federal patient protection and affordable care act of 2010." [2011 c 205 § 2.]

Effective date—2011 c 205: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 29, 2011]." [2011 c 205 § 3.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Findings—2005 c 188: "The legislature finds that the basic health plan is a valuable means of providing access to affordable health insurance cover-

age for low-income families and individuals in Washington state. The legislature further finds that persons studying in the United States as full-time students under temporary visas must show, as a condition of receiving their temporary visa, that they have sufficient funds available for self-support during their entire proposed course of study. For this reason, the legislature finds that it is not appropriate to provide subsidized basic health plan coverage to this group of students." [2005 c 188 § 1.]

Effective date—2004 c 192: "This act takes effect January 1, 2005." [2004 c 192 § 6.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050. Additional notes found at www.leg.wa.gov

70.47.060 Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment. The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care. In addition, the administrator may, to the extent that funds are available, offer as basic health plan services chemical dependency services, mental health services, and organ transplant services. All subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive covered basic health care services in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.47.030, and such other factors as the administrator deems appropriate. The administrator shall encourage enrollees who have been continually enrolled on basic health for a period of one year or more to complete a health risk assessment and participate in programs approved by the administrator that may include wellness, smoking cessation, and chronic disease management programs. In approving programs, the administrator shall consider evidence that any such programs are proven to improve enrollee health status.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to

subsection (11) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection (12) of this section.

(b) To determine the periodic premiums due the administrator from subsidized enrollees under RCW 70.47.020(9)(b). Premiums due for foster parents with gross family income up to two hundred percent of the federal poverty level shall be set at the minimum premium amount charged to enrollees with income below sixty-five percent of the federal poverty level. Premiums due for foster parents with gross family income between two hundred percent and three hundred percent of the federal poverty level shall not exceed one hundred dollars per month.

(c) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(d) To determine the periodic premiums due the administrator from health coverage tax credit eligible enrollees. Premiums due from health coverage tax credit eligible enrollees must be in an amount equal to the cost charged by the managed health care system provider to the state for the plan, plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201. The administrator will consider the impact of eligibility determination by the appropriate federal agency designated by the Trade Act of 2002 (P.L. 107-210) as well as the premium collection and remittance activities by the United States internal revenue service when determining the administrative cost charged for health coverage tax credit eligible enrollees.

(e) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator. The administrator shall establish a mechanism for receiving premium payments from the United States internal revenue service for health coverage tax credit eligible enrollees.

(f) To develop, as an offering by every health carrier providing coverage identical to the basic health plan, as configured on January 1, 2001, a basic health plan model plan with uniformity in enrollee cost-sharing requirements.

(g) To collect from all public employees a voluntary opt-in donation of varying amounts through a monthly or one-time payroll deduction as provided for in RCW 41.04.230. The donation must be deposited in the health services account established in *RCW 43.72.900 to be used for the sole purpose of maintaining enrollment capacity in the basic health plan.

The administrator shall send an annual notice to state employees extending the opportunity to participate in the opt-in donation program for the purpose of saving enrollment slots for the basic health plan. The first such notice shall be sent to public employees no later than June 1, 2009.

The notice shall include monthly sponsorship levels of fifteen dollars per month, thirty dollars per month, fifty dollars per month, and any other amounts deemed reasonable by the administrator. The sponsorship levels shall be named

"safety net contributor," "safety net hero," and "safety net champion" respectively. The donation amounts provided shall be tied to the level of coverage the employee will be purchasing for a working poor individual without access to health care coverage.

The administrator shall ensure that employees are given an opportunity to establish a monthly standard deduction or a one-time deduction towards the basic health plan donation program. The basic health plan donation program shall be known as the "save the safety net program."

The donation permitted under this subsection may not be collected from any public employee who does not actively opt in to the donation program. Written notification of intent to discontinue participation in the donation program must be provided by the public employee at least fourteen days prior to the next standard deduction.

(3) To evaluate, with the cooperation of participating managed health care system providers, the impact on the basic health plan of enrolling health coverage tax credit eligible enrollees. The administrator shall issue to the appropriate committees of the legislature preliminary evaluations on June 1, 2005, and January 1, 2006, and a final evaluation by June 1, 2006. The evaluation shall address the number of persons enrolled, the duration of their enrollment, their utilization of covered services relative to other basic health plan enrollees, and the extent to which their enrollment contributed to any change in the cost of the basic health plan.

(4) To end the participation of health coverage tax credit eligible enrollees in the basic health plan if the federal government reduces or terminates premium payments on their behalf through the United States internal revenue service.

(5) To design and implement a structure of enrollee cost-sharing due a managed health care system from subsidized, nonsubsidized, and health coverage tax credit eligible enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, and may utilize copayments, deductibles, and other cost-sharing mechanisms, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

(6) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists. Such a closure does not apply to health coverage tax credit eligible enrollees who receive a premium subsidy from the United States internal revenue service as long as the enrollees qualify for the health coverage tax credit program. To prevent the risk of overexpenditure, the administrator may disenroll persons receiving subsidies from the program based on criteria adopted by the administrator. The criteria may include: Length of continual enrollment on the program, income level, or eligibility for other coverage. The administrator shall identify enrollees who are eligible for other coverage, and, working with the department of social and health service as provided in RCW 70.47.010(5)(d), transition enrollees currently eligible for federally financed categorically needy or medically needy programs administered under chapter 74.09 RCW to that coverage. The administrator shall develop criteria for persons disenrolled under this subsection to reapply for the program.

(7) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020. The level of subsidy provided to persons who qualify may be based on the lowest cost plans, as defined by the administrator.

(8) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(9) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan for subsidized enrollees, nonsubsidized enrollees, or health coverage tax credit eligible enrollees. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the managed health care system if such providers have entered into provider agreements with the department of social and health services.

(10) To receive periodic premiums from or on behalf of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(11) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized, nonsubsidized, or health coverage tax credit eligible enrollees, to give priority to members of the Washington national guard and reserves who served in Operation Enduring Freedom, Operation Iraqi Freedom, or Operation Noble Eagle, and their spouses and dependents, for enrollment in the Washington basic health plan, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and on a reasonable schedule defined by the authority, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. The application is also considered an application for medical assistance under chapter 74.09 RCW and must include a social security number, if available, for each family member requesting coverage. Funds received by a family as part of participation in the adoption support program authorized under RCW 26.33.320 and 74.13A.005 through 74.13A.080 shall not be counted toward a family's current gross family income for the purposes of this chapter. When an enrollee fails to report income or income changes accurately, the administrator shall have the authority either to bill the enrollee for the amounts overpaid by the state or to impose

civil penalties of up to two hundred percent of the amount of subsidy overpaid due to the enrollee incorrectly reporting income. The administrator shall adopt rules to define the appropriate application of these sanctions and the processes to implement the sanctions provided in this subsection, within available resources. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to reenroll in the plan.

(12) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator may require that a business owner pay at least an amount equal to what the employee pays after the state pays its portion of the subsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(13) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same or actuarially equivalent for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(14) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements with

other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(15) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(16) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(17) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

(18) In consultation with appropriate state and local government agencies, to establish criteria defining eligibility for persons confined or residing in government-operated institutions.

(19) To administer the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii) pursuant to a contract with the Washington state health insurance pool.

(20) To give priority in enrollment to persons who disenrolled from the program in order to enroll in medicaid, and subsequently became ineligible for medicaid coverage. [2011 c 284 § 2; 2009 c 568 § 3; 2007 c 259 § 36; 2006 c 343 § 9; 2004 c 192 § 3; 2001 c 196 § 13; 2000 c 79 § 34. Prior: 1998 c 314 § 17; 1998 c 148 § 1; prior: 1997 c 337 § 2; 1997 c 335 § 2; 1997 c 245 § 6; 1997 c 231 § 206; prior: 1995 c 266 § 1; 1995 c 2 § 4; 1994 c 309 § 5; 1993 c 492 § 212; 1992 c 232 § 908; prior: 1991 sp.s. c 4 § 2; 1991 c 3 § 339; 1987 1st ex.s. c 5 § 8.]

***Reviser's note:** RCW 43.72.900 was repealed by 2009 c 479 § 29.

Effective date—2009 c 568 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 568 § 8.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Findings—2006 c 343: See note following RCW 43.60A.160.

Effective date—2004 c 192: See note following RCW 70.47.020.

Effective date—2001 c 196: See note following RCW 48.20.025.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050. Additional notes found at www.leg.wa.gov

70.47.0601 Income determination—Unemployment compensation. The administrator shall not count the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1202 when determining an individual's gross family income, eligibility, and premium share. [2011 c 4 § 18.]

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

70.47.100 Participation by a managed health care system. (Expiration of subsections.) (1) A managed health care system participating in the plan shall do so by contract with the administrator and shall provide, directly or by contract with other health care providers, covered basic health care services to each enrollee covered by its contract with the administrator as long as payments from the administrator on behalf of the enrollee are current. A participating managed

health care system may offer, without additional cost, health care benefits or services not included in the schedule of covered services under the plan. A participating managed health care system shall not give preference in enrollment to enrollees who accept such additional health care benefits or services. Managed health care systems participating in the plan shall not discriminate against any potential or current enrollee based upon health status, sex, race, ethnicity, or religion. The administrator may receive and act upon complaints from enrollees regarding failure to provide covered services or efforts to obtain payment, other than authorized copayments, for covered services directly from enrollees, but nothing in this chapter empowers the administrator to impose any sanctions under Title 18 RCW or any other professional or facility licensing statute.

(2) A managed health care system shall pay a nonparticipating provider that provides a service covered under this chapter to the system's enrollee no more than the lowest amount paid for that service under the managed health care system's contracts with similar providers in the state.

(3) Pursuant to federal managed care access standards, 42 C.F.R. Sec. 438, managed health care systems must maintain a network of appropriate providers that is supported by written agreements sufficient to provide adequate access to all services covered under the contract with the authority, including hospital-based physician services. The authority will monitor and periodically report on the proportion of services provided by contracted providers and nonparticipating providers, by county, for each managed health care system to ensure that managed health care systems are meeting network adequacy requirements. No later than January 1st of each year, the authority will review and report its findings to the appropriate policy and fiscal committees of the legislature for the preceding state fiscal year.

(4) The plan shall allow, at least annually, an opportunity for enrollees to transfer their enrollments among participating managed health care systems serving their respective areas. The administrator shall establish a period of at least twenty days in a given year when this opportunity is afforded enrollees, and in those areas served by more than one participating managed health care system the administrator shall endeavor to establish a uniform period for such opportunity. The plan shall allow enrollees to transfer their enrollment to another participating managed health care system at any time upon a showing of good cause for the transfer.

(5) Prior to negotiating with any managed health care system, the administrator shall determine, on an actuarially sound basis, the reasonable cost of providing the schedule of basic health care services, expressed in terms of upper and lower limits, and recognizing variations in the cost of providing the services through the various systems and in different areas of the state.

(6) In negotiating with managed health care systems for participation in the plan, the administrator shall adopt a uniform procedure that includes at least the following:

(a) The administrator shall issue a request for proposals, including standards regarding the quality of services to be provided; financial integrity of the responding systems; and responsiveness to the unmet health care needs of the local communities or populations that may be served;

(b) The administrator shall then review responsive proposals and may negotiate with respondents to the extent necessary to refine any proposals;

(c) The administrator may then select one or more systems to provide the covered services within a local area; and

(d) The administrator may adopt a policy that gives preference to respondents, such as nonprofit community health clinics, that have a history of providing quality health care services to low-income persons.

(7)(a) The administrator may contract with a managed health care system to provide covered basic health care services to subsidized enrollees, nonsubsidized enrollees, health coverage tax credit eligible enrollees, or any combination thereof. At a minimum, such contracts issued on or after January 1, 2012, must include:

(i) Provider reimbursement methods that incentivize chronic care management within health homes;

(ii) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use; and

(iii) Promoting provider participation in the program of training and technical assistance regarding care of people with chronic conditions described in RCW 43.70.533, including allocation of funds to support provider participation in the training unless the managed care system is an integrated health delivery system that has programs in place for chronic care management.

(b) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(c) For the purposes of this subsection, "chronic care management," "chronic condition," and "health home" have the same meaning as in RCW 74.09.010.

(d) Contracts that include the items in (a)(i) through (iii) of this subsection must not exceed the rates that would be paid in the absence of these provisions.

(8) The administrator may establish procedures and policies to further negotiate and contract with managed health care systems following completion of the request for proposal process in subsection (6) of this section, upon a determination by the administrator that it is necessary to provide access, as defined in the request for proposal documents, to covered basic health care services for enrollees.

(9) The administrator may implement a self-funded or self-insured method of providing insurance coverage to subsidized enrollees, as provided under RCW 41.05.140. Prior to implementing a self-funded or self-insured method, the administrator shall ensure that funding available in the basic health plan self-insurance reserve account is sufficient for the self-funded or self-insured risk assumed, or expected to be assumed, by the administrator. If implementing a self-funded or self-insured method, the administrator may request funds to be moved from the basic health plan trust account or the basic health plan subscription account to the basic health plan self-insurance reserve account established in RCW 41.05.140.

(10) Subsections (2) and (3) of this section expire July 1, 2016. [2011 1st sp.s. c 9 § 4; 2011 c 316 § 5; 2009 c 568 § 5; 2004 c 192 § 4; 2000 c 79 § 35; 1987 1st ex.s. c 5 § 12.]

Reviser's note: This section was amended by 2011 c 316 § 5 and by 2011 1st sp.s. c 9 § 4, each without reference to the other. Both amendments

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

Findings—Intent—2011 1st sp.s. c 9: See note following RCW 70.47.020.

Effective date—2004 c 192: See note following RCW 70.47.020.

Additional notes found at www.leg.wa.gov

70.47.110 Enrollment of medical assistance recipients. The health care authority may make payments to participating managed health care systems on behalf of any enrollee who is a recipient of medical care under chapter 74.09 RCW, at the maximum rate allowable for federal matching purposes under Title XIX of the social security act. Any enrollee on whose behalf the health care authority makes such payments may continue as an enrollee, making premium payments based on the enrollee's own income as determined under the sliding scale, after eligibility for coverage under chapter 74.09 RCW has ended, as long as the enrollee remains eligible under this chapter. Nothing in this section affects the right of any person eligible for coverage under chapter 74.09 RCW to receive the services offered to other persons under that chapter but not included in the schedule of basic health care services covered by the plan. The director shall seek to determine which enrollees or prospective enrollees may be eligible for medical care under chapter 74.09 RCW and may require these individuals to complete the eligibility determination process under chapter 74.09 RCW prior to enrollment or continued participation in the plan. The director shall adopt procedures to facilitate the transition of plan enrollees and payments on their behalf between the plan and the programs established under chapter 74.09 RCW. [2011 1st sp.s. c 15 § 84; 1991 sp.s. c 4 § 3; 1987 1st ex.s. c 5 § 13.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

70.47.230 Payments to nonparticipating providers. (Expires July 1, 2016.) (1) For services provided to plan enrollees on or after August 24, 2011, nonparticipating providers must accept as payment in full the amount paid by the managed health care system under RCW 70.47.100(2) in addition to any deductible, coinsurance, or copayment that is due from the enrollee under the terms and conditions set forth in the managed health care system contract with the administrator. A plan enrollee is not liable to any nonparticipating provider for covered services, except for amounts due for any deductible, coinsurance, or copayment under the terms and conditions set forth in the managed health care system contract with the administrator.

(2) This section expires July 1, 2016. [2011 1st sp.s. c 9 § 5.]

Findings—Intent—2011 1st sp.s. c 9: See note following RCW 70.47.020.

[2011 RCW Supp—page 1360]

Chapter 70.47A RCW

SMALL EMPLOYER HEALTH INSURANCE PARTNERSHIP PROGRAM

Sections

- 70.47A.020 Definitions.
- 70.47A.030 Health insurance partnership established—Administrator duties.
- 70.47A.050 Enrollment to remain within appropriation.
- 70.47A.110 Health insurance partnership board—Duties.

70.47A.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrator" means the administrator of the Washington state health care authority, established under chapter 41.05 RCW.

(2) "Board" means the health insurance partnership board established in RCW 70.47A.100.

(3) "Eligible partnership participant" means a partnership participant who:

(a) Is a resident of the state of Washington; and

(b) Has family income that does not exceed two hundred percent of the federal poverty level, as determined annually by the federal department of health and human services.

(4) "Health benefit plan" has the same meaning as defined in RCW 48.43.005.

(5) "Participating small employer" means a small employer that has entered into an agreement with the partnership to purchase health benefits through the partnership. To participate in the partnership, an employer must attest to the fact that (a) the employer does not currently offer health insurance to its employees and has not offered insurance for at least six months, and (b) at least fifty percent of the employer's employees are low-wage workers.

(6) "Partnership" means the health insurance partnership established in RCW 70.47A.030.

(7) "Partnership participant" means a participating small employer and employees of a participating small employer, and, except to the extent provided otherwise in RCW 70.47A.110(1)(e), a former employee of a participating small employer who chooses to continue receiving coverage through the partnership following separation from employment.

(8) "Small employer" has the same meaning as defined in RCW 48.43.005.

(9) "Subsidy" or "premium subsidy" means payment or reimbursement to an eligible partnership participant toward the purchase of a health benefit plan, and may include a net billing arrangement with insurance carriers or a prospective or retrospective payment for health benefit plan premiums. [2011 c 287 § 1; 2008 c 143 § 1; 2007 c 260 § 2; 2006 c 255 § 2.]

70.47A.030 Health insurance partnership established—Administrator duties. (1) To the extent funding is appropriated in the operating budget for this purpose or obtained through federal resources, the health insurance partnership is established. The administrator shall be responsible for the implementation and operation of the health insurance partnership, directly or by contract. The administrator shall

offer premium subsidies to eligible partnership participants under RCW 70.47A.040.

(2) Consistent with policies adopted by the board under RCW 70.47A.110, the administrator shall, directly or by contract:

(a) Establish and administer procedures for enrolling small employers in the partnership, including publicizing the existence of the partnership and disseminating information on enrollment, and establishing rules related to minimum participation of employees in small groups purchasing health insurance through the partnership. Opportunities to publicize the program for outreach and education of small employers on the value of insurance shall explore the use of online employer guides;

(b) Establish and administer procedures for health benefit plan enrollment by employees of small employers during open enrollment periods and outside of open enrollment periods upon the occurrence of any qualifying event specified in the federal health insurance portability and accountability act of 1996 or applicable state law. Except to the extent authorized in RCW 70.47A.110(1)(e), neither the employer nor the partnership shall limit an employee's choice of coverage from among the health benefit plans offered through the partnership;

(c) Establish and manage a system of collecting and transmitting to the applicable carriers all premium payments or contributions made by or on behalf of partnership participants, including employer contributions, automatic payroll deductions for partnership participants, premium subsidy payments, and contributions from philanthropies;

(d) Establish and manage a system for determining eligibility for and making premium subsidy payments under chapter 259, Laws of 2007;

(e) Establish a mechanism to apply a surcharge to each health benefit plan purchased through the partnership, which shall be used only to pay for administrative and operational expenses of the partnership. The surcharge must be applied uniformly to all health benefit plans purchased through the partnership. Any surcharge amount may be added to the premium, but shall not be considered part of the small group community rate, and shall be applied only to the coverage purchased through the partnership. Surcharges may not be used to pay any premium assistance payments under this chapter. The surcharge shall reflect administrative and operational expenses remaining after any appropriation provided by the legislature or resources received from the federal government to support administrative or operational expenses of the partnership during the year the surcharge is assessed;

(f) Design a schedule of premium subsidies that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members based on a benchmark health benefit plan designated by the board. The amount of an eligible partnership participant's premium subsidy shall be determined by applying a sliding scale subsidy schedule with the percentage of premium similar to that developed for subsidized basic health plan enrollees under RCW 70.47.060. The subsidy shall be applied to the employee's premium obligation for his or her health benefit plan, so that employees benefit financially from any employer contribution to the cost of their coverage through the partnership.

(3) The administrator may enter into interdepartmental agreements with the office of the insurance commissioner, the department of social and health services, and any other state agencies necessary to implement this chapter. [2011 c 287 § 2; 2009 c 257 § 1; 2008 c 143 § 2; 2007 c 259 § 58; 2006 c 255 § 3.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

70.47A.050 Enrollment to remain within appropriation. Enrollment in the health insurance partnership is not an entitlement and shall not result in expenditures that exceed the amount that has been appropriated for the program in the operating budget or resources received from the federal government. If it appears that continued enrollment will result in expenditures exceeding the appropriated level for a particular fiscal year, the administrator may freeze new enrollment in the program and establish a waiting list of eligible employees who shall receive subsidies only when sufficient funds are available. [2011 c 287 § 3; 2007 c 260 § 12; 2006 c 255 § 5.]

70.47A.110 Health insurance partnership board—Duties. (1) The health insurance partnership board shall:

(a) Develop policies for enrollment of small employers in the partnership, including minimum participation rules for small employer groups. The small employer shall determine the criteria for eligibility and enrollment in his or her plan and the terms and amounts of the employer's contributions to that plan, consistent with any minimum employer premium contribution level established by the board under (d) of this subsection;

(b) Designate health benefit plans that are currently offered in the small group market that will be offered to participating small employers through the health insurance partnership and those plans that will qualify for premium subsidy payments. Up to five health benefit plans shall be chosen, with multiple deductible and point-of-service cost-sharing options. The health benefit plans shall range from catastrophic to comprehensive coverage, and one health benefit plan shall be a high deductible health plan accompanied by a health savings account. Every effort shall be made to include health benefit plans that include components to maximize the quality of care provided and result in improved health outcomes, such as preventive care, wellness incentives, chronic care management services, and provider network development and payment policies related to quality of care;

(c) Approve a mid-range benefit plan from those selected to be used as a benchmark plan for calculating premium subsidies;

(d) Determine whether there should be a minimum employer premium contribution on behalf of employees, and if so, how much;

(e) Develop policies related to partnership participant enrollment in health benefit plans. The board may focus its initial efforts on access to coverage and affordability of coverage for participating small employers and their employees. To the extent necessary for successful implementation of the partnership, the board may:

(i) Limit partnership participant health benefit plan choice; and

(ii) Offer former employees of participating small employers the opportunity to continue coverage after separation from employment to the extent that a former employee is eligible for continuation coverage under 29 U.S.C. Sec. 1161 et seq.;

(f) Determine appropriate health benefit plan rating methodologies. The methodologies shall be based on the small group adjusted community rate as defined in Title 48 RCW. The board shall evaluate the impact of applying the small group adjusted community rating methodology to health benefit plans purchased through the partnership on the principle of allowing each partnership participant to choose his or her health benefit plan, and may implement one or more risk adjustment or reinsurance mechanisms to reduce uncertainty for carriers and provide for efficient risk management of high-cost enrollees;

(g) Determine whether the partnership should be designated as the administrator of a participating small employer health benefit plan and undertake the obligations required of a plan administrator under federal law in order to minimize administrative burdens on participating small employers;

(h) Conduct analyses and provide recommendations as requested by the legislature and the governor, with the assistance of staff from the health care authority and the office of the insurance commissioner.

(2) The board may authorize one or more limited health care service plans for dental care services to be offered by limited health care service contractors under RCW 48.44.035. However, such plan shall not qualify for subsidy payments.

(3) In fulfilling the requirements of this section, the board shall consult with small employers, the office of the insurance commissioner, members in good standing of the American academy of actuaries, health carriers, agents and brokers, and employees of small business. [2011 c 287 § 4; 2008 c 143 § 5; 2007 c 260 § 5.]

Chapter 70.48 RCW

CITY AND COUNTY JAILS ACT

Sections

70.48.130	Emergency or necessary medical and health care for confined persons—Reimbursement procedures—Conditions—Limitations.
70.48.245	Transfer of persons with developmental disabilities or traumatic brain injuries from jail to department of corrections facility.

70.48.130 Emergency or necessary medical and health care for confined persons—Reimbursement procedures—Conditions—Limitations. (1) It is the intent of the legislature that all jail inmates receive appropriate and cost-effective emergency and necessary medical care. Governing units, the health care authority, and medical care providers shall cooperate to achieve the best rates consistent with adequate care.

(2) Payment for emergency or necessary health care shall be by the governing unit, except that the health care authority shall directly reimburse the provider pursuant to chapter 74.09 RCW, in accordance with the rates and benefits established by the authority, if the confined person is eligible under the authority's medical care programs as authorized

under chapter 74.09 RCW. After payment by the authority, the financial responsibility for any remaining balance, including unpaid client liabilities that are a condition of eligibility or participation under chapter 74.09 RCW, shall be borne by the medical care provider and the governing unit as may be mutually agreed upon between the medical care provider and the governing unit. In the absence of mutual agreement between the medical care provider and the governing unit, the financial responsibility for any remaining balance shall be borne equally between the medical care provider and the governing unit. Total payments from all sources to providers for care rendered to confined persons eligible under chapter 74.09 RCW shall not exceed the amounts that would be paid by the authority for similar services provided under Title XIX medicaid, unless additional resources are obtained from the confined person.

(3) As part of the screening process upon booking or preparation of an inmate into jail, general information concerning the inmate's ability to pay for medical care shall be identified, including insurance or other medical benefits or resources to which an inmate is entitled. This information shall be made available to the authority, the governing unit, and any provider of health care services.

(4) The governing unit or provider may obtain reimbursement from the confined person for the cost of health care services not provided under chapter 74.09 RCW, including reimbursement from any insurance program or from other medical benefit programs available to the confined person. Nothing in this chapter precludes civil or criminal remedies to recover the costs of medical care provided jail inmates or paid for on behalf of inmates by the governing unit. As part of a judgment and sentence, the courts are authorized to order defendants to repay all or part of the medical costs incurred by the governing unit or provider during confinement.

(5) To the extent that a confined person is unable to be financially responsible for medical care and is ineligible for the authority's medical care programs under chapter 74.09 RCW, or for coverage from private sources, and in the absence of an interlocal agreement or other contracts to the contrary, the governing unit may obtain reimbursement for the cost of such medical services from the unit of government whose law enforcement officers initiated the charges on which the person is being held in the jail: PROVIDED, That reimbursement for the cost of such services shall be by the state for state prisoners being held in a jail who are accused of either escaping from a state facility or of committing an offense in a state facility.

(6) There shall be no right of reimbursement to the governing unit from units of government whose law enforcement officers initiated the charges for which a person is being held in the jail for care provided after the charges are disposed of by sentencing or otherwise, unless by intergovernmental agreement pursuant to chapter 39.34 RCW.

(7) Under no circumstance shall necessary medical services be denied or delayed because of disputes over the cost of medical care or a determination of financial responsibility for payment of the costs of medical care provided to confined persons.

(8) Nothing in this section shall limit any existing right of any party, governing unit, or unit of government against the person receiving the care for the cost of the care provided.

[2011 1st sp.s. c 15 § 85; 1993 c 409 § 1; (2007 c 259 § 66 expired June 30, 2009); 1986 c 118 § 9; 1977 ex.s. c 316 § 13.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Expiration date—2007 c 259 § 66: "Section 66 of this act expires June 30, 2009." [2007 c 259 § 76.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Additional notes found at www.leg.wa.gov

70.48.245 Transfer of persons with developmental disabilities or traumatic brain injuries from jail to department of corrections facility. When a jail has determined that a person in custody has or may have a developmental disability as defined in RCW 71A.10.020 or a traumatic brain injury, upon transfer of the person to a department of corrections facility or other jail facility, every reasonable effort shall be made by the transferring jail staff to communicate to receiving staff the nature of the disability, as determined by the jail and any necessary accommodation for the person as identified by the transferring jail staff. [2011 c 236 § 2.]

Chapter 70.54 RCW

MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

Sections

70.54.240 Cancer registry program—Reporting requirements.

70.54.240 Cancer registry program—Reporting requirements. (1) The department of health shall adopt rules as to which types of cancer shall be reported, who shall report, and the form and timing of the reports. A patient's usual occupation or, if the patient is retired, the primary occupation of the patient before retirement must be reported.

(2) Every health care facility and independent clinical laboratory, and those physicians or others providing health care who diagnose or treat any patient with cancer who is not hospitalized within one month of diagnosis, will provide the contractor with the information required under subsection (1) of this section. The required information may be collected on a regional basis where such a system exists and forwarded to the contractor in a form suitable for the purposes of RCW 70.54.230 through 70.54.270. Such reporting arrangements shall be reduced to a written agreement between the contractor and any regional reporting agency which shall detail the manner, form, and timeliness of the reporting. [2011 c 38 § 1; 1990 c 280 § 3.]

Intent—1990 c 280: See note following RCW 70.54.230.

Chapter 70.74 RCW

WASHINGTON STATE EXPLOSIVES ACT

Sections

70.74.300 Explosive containers to be marked—Penalty.

70.74.300 Explosive containers to be marked—Penalty. Every person who shall put up for sale, or who shall deliver to any warehouse operator, dock, depot, or common carrier any package, cask, or can containing any explosive, nitroglycerin, dynamite, or powder, without having been properly labeled thereon to indicate its explosive classification, shall be guilty of a gross misdemeanor. [2011 c 336 § 840; 1969 ex.s. c 137 § 26; 1909 c 249 § 254; RRS § 2506.]

Chapter 70.79 RCW

BOILERS AND UNFIRED PRESSURE VESSELS

Sections

70.79.320 Operating without inspection certificate prohibited—Penalty.

70.79.320 Operating without inspection certificate prohibited—Penalty. (1) It shall be unlawful for any person, firm, partnership, or corporation to operate under pressure in this state a boiler or unfired pressure vessel, to which this chapter applies, without a valid inspection certificate as provided for in this chapter.

(2) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(3) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(4) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice using a method by which the mailing can be tracked or the delivery can be confirmed to the violator that a hearing may be requested under RCW 70.79.361. The hearing shall not stay the effect of the penalty. [2011 c 301 § 21; 2005 c 22 § 6; 1986 c 97 § 2; 1951 c 32 § 31.]

Chapter 70.87 RCW

ELEVATORS, LIFTING DEVICES, AND MOVING WALKS

Sections

70.87.125 Suspension or revocation of license or permit—Grounds—Notice—Stay of suspension or revocation—Removal of suspension or reinstatement of license or permit.
70.87.185 Penalty for violation of chapter—Rules—Notice.
70.87.205 Resolution of disputes by arbitration—Appointment of arbitrators—Procedure—Decision—Enforcement.

70.87.125 Suspension or revocation of license or permit—Grounds—Notice—Stay of suspension or revocation—Removal of suspension or reinstatement of license or permit. (1) A license issued under this chapter may be suspended, revoked, or subject to civil penalty by the department upon verification that any one or more of the following reasons exist:

(a) Any false statement as to a material matter in the application;

(b) Fraud, misrepresentation, or bribery in securing a license;

(c) Failure to notify the department and the owner or lessee of a conveyance or related mechanisms of any condition not in compliance with this chapter;

(d) A violation of any provisions of this chapter; and

(e) If the elevator contractor does not employ an individual designated as the primary point of contact with the department and who has successfully completed the elevator contractor examination. In the case of a separation of employment, termination of this relationship or designation, or death of the designated individual, the elevator contractor must, within ninety days, designate a new individual who has successfully completed the elevator contractor examination.

(2) The department may suspend or revoke a permit if:

(a) The permit was obtained through fraud or by error if, in the absence of error, the department would not have issued the permit;

(b) The conveyance for which the permit was issued has not been worked on in accordance with this chapter; or

(c) The conveyance has become unsafe.

(3) The department shall suspend any license issued under this chapter promptly after receiving notice from the department of social and health services that the holder of the license has been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a support order. If the person has continued to meet all other license requirements during the suspension, reissuance of the license shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

(4) The department shall notify in writing the owner, licensee, or person performing conveyance work, of its action and the reason for the action. The department shall send the notice using a method by which the mailing can be tracked or the delivery can be confirmed to the last known address of the owner or person. The notice shall inform the owner or person that a hearing may be requested pursuant to RCW 70.87.170.

(5)(a) If the department has suspended or revoked a permit or license because of fraud or error, and a hearing is requested, the suspension or revocation shall be stayed until the hearing is concluded and a decision is issued.

(b) If the department has revoked or suspended a license because the licensee performing the work covered by this chapter is working in a manner that does not effectively prevent injuries or deaths or protect employees and the public from unsafe conditions as is required by this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(c) If the department has revoked or suspended a permit because the conveyance is unsafe or the conveyance work is not permitted and performed in accordance with this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(6) The department must remove a suspension or reinstate a revoked license if the licensee pays all the assessed civil penalties and is able to demonstrate to the department that the licensee has met all the qualifications established by this chapter.

(7) The department shall remove a suspension or reinstate a revoked permit if a conveyance is repaired or modified to bring it into compliance with this chapter. [2011 c 301 § 22; 2003 c 143 § 16; 2002 c 98 § 6; 1983 c 123 § 10.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.185 Penalty for violation of chapter—Rules—Notice. (1) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(2) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(3) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice using a method by which the mailing can be tracked or the delivery can be confirmed to the violator's last known address. The notice shall inform the violator that a hearing may be requested under RCW 70.87.170. The hearing shall not stay the effect of the penalty. [2011 c 301 § 23; 1983 c 123 § 18.]

70.87.205 Resolution of disputes by arbitration—Appointment of arbitrators—Procedure—Decision—Enforcement. (1) Disputes arising under RCW 70.87.200(2) shall be resolved by arbitration. The request shall be sent using a method by which the mailing can be tracked or the delivery can be confirmed.

(2) The department shall appoint one arbitrator; the municipality shall appoint one arbitrator; and the arbitrators chosen by the department and the municipality shall appoint the third arbitrator. If the two arbitrators cannot agree on the third arbitrator, the presiding judge of the Thurston county superior court, or his or her designee, shall appoint the third arbitrator.

(3) The arbitration shall be held pursuant to the procedures in chapter 7.04A RCW, except that RCW 7.04A.280(1)(f) shall not apply. The decision of the arbitrators is final and binding on the parties. Neither party may appeal a decision to any court.

(4) A party may petition the Thurston county superior court to enforce a decision of the arbitrators. [2011 c 301 § 24; 2005 c 433 § 49; 1983 c 123 § 23.]

Application—Captions not law—Savings—Effective date—2005 c 433: See RCW 7.04A.290 through 7.04A.310 and 7.04A.900.

Chapter 70.93 RCW

WASTE REDUCTION, RECYCLING, AND MODEL LITTER CONTROL ACT

Sections

70.93.180 Waste reduction, recycling, and litter control account—Distribution.

70.93.180 Waste reduction, recycling, and litter control account—Distribution. (1) There is hereby created an account within the state treasury to be known as the "waste reduction, recycling, and litter control account". Moneys in the account may be spent only after appropriation. Expenditures from the waste reduction, recycling, and litter control account shall be used as follows:

(a) Fifty percent to the department of ecology, for use by the departments of ecology, natural resources, revenue, transportation, and corrections, and the parks and recreation commission, for use in litter collection programs, to be distributed under RCW 70.93.220. The amount to the department of ecology shall also be used for a central coordination function for litter control efforts statewide, for the biennial litter survey under RCW 70.93.200(8), and for statewide public awareness programs under RCW 70.93.200(7). The amount to the department shall also be used to defray the costs of administering the funding, coordination, and oversight of local government programs for waste reduction, litter control, and recycling, so that local governments can apply one hundred percent of their funding to achieving program goals. The amount to the department of revenue shall be used to enforce compliance with the litter tax imposed in chapter 82.19 RCW;

(b) Twenty percent to the department for local government funding programs for waste reduction, litter control, and recycling activities by cities and counties under RCW 70.93.250, to be administered by the department of ecology; and

(c) Thirty percent to the department of ecology for waste reduction and recycling efforts.

(2) All taxes imposed in RCW 82.19.010 and fines and bail forfeitures collected or received pursuant to this chapter shall be deposited in the waste reduction, recycling, and litter control account and used for the programs under subsection (1) of this section.

(3) Not less than five percent and no more than ten percent of the amount appropriated into the waste reduction, recycling, and litter control account every biennium shall be reserved for capital needs, including the purchase of vehicles for transporting crews and for collecting litter and solid waste. Capital funds shall be distributed among state agencies and local governments according to the same criteria provided in RCW 70.93.220 for the remainder of the funds, so that the most effective waste reduction, litter control, and recycling programs receive the most funding. The intent of this subsection is to provide funds for the purchase of equipment that will enable the department to account for the greatest return on investment in terms of reaching a zero litter goal.

(4) During the 2009-2011 fiscal biennium, the legislature may transfer from the waste reduction, recycling, and litter control account to the state general fund such amounts as reflect the excess fund balance of the account. Additionally, during the 2009-2011 fiscal biennium, subsection (1)(a), (b), and (c) of this section is suspended.

(5) During the 2011-2013 fiscal biennium, the legislature may transfer from the waste reduction, recycling, and litter control account to the state general fund such amounts as reflect the excess fund balance of the account. Additionally, during the 2011-2013 fiscal biennium, subsection (1)(a), (b), and (c) of this section is suspended. [2011 1st sp.s. c 50 § 963; 2010 1st sp.s. c 37 § 945; 2009 c 564 § 950; 2005 c 518 § 939; 1998 c 257 § 5; 1992 c 175 § 8; 1991 sp.s. c 13 § 40; 1985 c 57 § 68; 1983 c 277 § 3; 1971 ex.s. c 307 § 18.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Additional notes found at www.leg.wa.gov

Chapter 70.94 RCW

WASHINGTON CLEAN AIR ACT

Sections

70.94.430	Penalties.
70.94.537	Transportation demand management—Commute trip reduction board.

70.94.430 Penalties. (1) Any person who knowingly violates any of the provisions of chapter 70.94 or 70.120 RCW, or any ordinance, resolution, or regulation in force pursuant thereto is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for up to three hundred sixty-four days, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for up to three hundred sixty-four days, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than fifty thousand dollars, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars. [2011 c 96 § 49; 2003 c 53 § 355; 1991 c 199 § 310; 1984 c 255 § 1; 1973 1st ex.s. c 176 § 1; 1967 c 238 § 61.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.537 Transportation demand management—Commute trip reduction board. (1) A sixteen member state commute trip reduction board is established as follows:

(a) The secretary of transportation or the secretary's designee who shall serve as chair;

(b) One representative from the office of financial management;

(c) The director or the director's designee of one of the following agencies, to be determined by the secretary of transportation:

- (i) *Department of general administration;
- (ii) Department of ecology;
- (iii) Department of commerce;

(d) Three representatives from cities and towns or counties appointed by the secretary of transportation for staggered four-year terms from a list recommended by the association of Washington cities or the Washington state association of counties;

(e) Two representatives from transit agencies appointed by the secretary of transportation for staggered four-year terms from a list recommended by the Washington state transit association;

(f) Two representatives from participating regional transportation planning organizations appointed by the secretary of transportation for staggered four-year terms;

(g) Four representatives of employers at or owners of major worksites in Washington, or transportation management associations, business improvement areas, or other transportation organizations representing employers, appointed by the secretary of transportation for staggered four-year terms; and

(h) Two citizens appointed by the secretary of transportation for staggered four-year terms.

Members of the commute trip reduction board shall serve without compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Members appointed by the secretary of transportation shall be compensated in accordance with RCW 43.03.220. The board has all powers necessary to carry out its duties as prescribed by this chapter.

(2) By March 1, 2007, the department of transportation shall establish rules for commute trip reduction plans and implementation procedures. The commute trip reduction board shall advise the department on the content of the rules. The rules are intended to ensure consistency in commute trip reduction plans and goals among jurisdictions while fairly taking into account differences in employment and housing density, employer size, existing and anticipated levels of transit service, special employer circumstances, and other factors the board determines to be relevant. The rules shall include:

(a) Guidance criteria for growth and transportation efficiency centers;

(b) Data measurement methods and procedures for determining the efficacy of commute trip reduction activities and progress toward meeting commute trip reduction plan goals;

(c) Model commute trip reduction ordinances;

(d) Methods for assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction;

(e) An appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain a waiver or modification of those requirements and criteria for determining eligibility for waiver or modification;

(f) Establishment of a process for determining the state's affected areas, including criteria and procedures for regional

transportation planning organizations in consultation with local jurisdictions to propose to add or exempt urban growth areas;

(g) Listing of the affected areas of the program to be done every four years as identified in subsection (5) of this section;

(h) Establishment of a criteria and application process to determine whether jurisdictions that voluntarily implement commute trip reduction are eligible for state funding;

(i) Guidelines and deadlines for creating and updating local commute trip reduction plans, including guidance to ensure consistency between the local commute trip reduction plan and the transportation demand management strategies identified in the transportation element in the local comprehensive plan, as required by RCW 36.70A.070;

(j) Guidelines for creating and updating regional commute trip reduction plans, including guidance to ensure the regional commute trip reduction plan is consistent with and incorporated into transportation demand management components in the regional transportation plan;

(k) Methods for regional transportation planning organizations to evaluate and certify that designated growth and transportation efficiency center programs meet the minimum requirements and are eligible for funding;

(l) Guidelines for creating and updating growth and transportation efficiency center programs; and

(m) Establishment of statewide program goals. The goals shall be designed to achieve substantial reductions in the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee, at a level that is projected to improve the mobility of people and goods by increasing the efficiency of the state highway system.

(3) The board shall create a state commute trip reduction plan that shall be updated every four years as discussed in subsection (5) of this section. The state commute trip reduction plan shall include, but is not limited to: (a) Statewide commute trip reduction program goals that are designed to substantially improve the mobility of people and goods; (b) identification of strategies at the state and regional levels to achieve the goals and recommendations for how transportation demand management strategies can be targeted most effectively to support commute trip reduction program goals; (c) performance measures for assessing the cost-effectiveness of commute trip reduction strategies and the benefits for the state transportation system; and (d) a sustainable financial plan. The board shall review and approve regional commute trip reduction plans, and work collaboratively with regional transportation planning organizations in the establishment of the state commute trip reduction plan.

(4) The board shall work with affected jurisdictions, major employers, and other parties to develop and implement a public awareness campaign designed to increase the effectiveness of local commute trip reduction programs and support achievement of the objectives identified in this chapter.

(5) The board shall evaluate and update the commute trip reduction program plan and recommend changes to the rules every four years, with the first assessment report due July 1, 2011, to ensure that the latest data methodology used by the department of transportation is incorporated into the program and to determine which areas of the state should be affected

by the program. The board shall review the definition of a major employer no later than December 1, 2009. The board shall regularly identify urban growth areas that are projected to be affected by chapter 329, Laws of 2006 in the next four-year period and may provide advance planning support to the potentially affected jurisdictions.

(6) The board shall review progress toward implementing commute trip reduction plans and programs and the costs and benefits of commute trip reduction plans and programs and shall make recommendations to the legislature and the governor by December 1, 2009, and every two years thereafter. In assessing the costs and benefits, the board shall consider the costs of not having implemented commute trip reduction plans and programs with the assistance of the transportation performance audit board authorized under **chapter 44.75 RCW. The board shall examine other transportation demand management programs nationally and incorporate its findings into its recommendations to the legislature. The recommendations shall address the need for continuation, modification, or termination or any or all requirements of this chapter.

(7) The board shall invite personnel with appropriate expertise from state, regional, and local government, private, public, and nonprofit providers of transportation services, and employers or owners of major worksites in Washington to act as a technical advisory group. The technical advisory group shall advise the board on the implementation of local and regional commute trip reduction plans and programs, program evaluation, program funding allocations, and state rules and guidelines. [2011 1st sp.s. c 21 § 26; 2006 c 329 § 7; 1997 c 250 § 5; 1996 c 186 § 514; 1995 c 399 § 188; 1991 c 202 § 15.]

Reviser's note: *(1) The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107. ***(2) Chapter 44.75 RCW was repealed by 2006 c 334 § 51.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Additional notes found at www.leg.wa.gov

Chapter 70.95 RCW

SOLID WASTE MANAGEMENT— REDUCTION AND RECYCLING

Sections

70.95.240 Unlawful to dump or deposit solid waste without permit—
Penalties—Litter cleanup restitution payment.

70.95.240 Unlawful to dump or deposit solid waste without permit—Penalties—Litter cleanup restitution payment. (1) Except as otherwise provided in this section or at a solid waste disposal site for which there is a valid permit, after the adoption of regulations or ordinances by any county, city, or jurisdictional board of health providing for the issuance of permits as provided in RCW 70.95.160, it is unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state.

(2) This section does not:

(a) Prohibit a person from dumping or depositing solid waste resulting from his or her own activities onto or under the surface of ground owned or leased by him or her when such action does not violate statutes or ordinances, or create a nuisance;

(b) Apply to a person using a waste-derived soil amendment that has been approved by the department under RCW 70.95.205; or

(c) Apply to the application of commercial fertilizer that has been registered with the department of agriculture as provided in RCW 15.54.325, and that is applied in accordance with the standards established in RCW 15.54.800(3).

(3)(a) It is a class 3 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b)(i) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard.

(ii) A person found to have littered in an amount greater than one cubic foot, but less than one cubic yard, shall also pay a litter cleanup restitution payment. This payment must be the greater of twice the actual cost of removing and properly disposing of the litter, or fifty dollars per cubic foot of litter.

(iii) The court shall distribute one-half of the restitution payment to the landowner where the littering occurred and one-half of the restitution payment to the jurisdictional health department investigating the incident. If the landowner provided written permission authorizing the littering on his or her property or assisted a person with littering on the landowner's property, the landowner is not entitled to any restitution ordered by the court and the full litter cleanup restitution payment must be provided to the jurisdictional health department investigating the incident.

(iv) A jurisdictional health department receiving all or a portion of a litter cleanup restitution payment must use the payment as follows:

(A) One-half of the payment may be used by the jurisdictional health department in the fulfillment of its responsibilities under this chapter; and

(B) One-half of the payment must be used to assist property owners located within the jurisdiction of the health department with the removal and proper disposal of litter in instances when the person responsible for the illegal dumping of the solid waste cannot be determined.

(v) The court may, in addition to the litter cleanup restitution payment, order the person to remove and properly dispose of the litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section if the person removes and properly disposes of the litter.

(c)(i) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more.

(ii) A person found to have littered in an amount greater than one cubic yard shall also pay a litter cleanup restitution payment. This payment must be the greater of twice the actual cost of removing and properly disposing of the litter, or one hundred dollars per cubic foot of litter.

(iii) The court shall distribute one-half of the restitution payment to the landowner where the littering occurred and one-half of the restitution payment to the jurisdictional health department investigating the incident. If the landowner provided written permission authorizing the littering on his or her property or assisted a person with littering on the landowner's property, the landowner is not entitled to any restitution ordered by the court and the full litter cleanup restitution payment must be provided to the jurisdictional health department investigating the incident.

(iv) A jurisdictional health department receiving all or a portion of a litter cleanup restitution payment must use the payment as follows:

(A) One-half of the payment may be used by the jurisdictional health department in the fulfillment of its responsibilities under this chapter; and

(B) One-half of the payment must be used to assist property owners located within the jurisdiction of the health department with the removal and proper disposal of litter in instances when the person responsible for the illegal dumping of the solid waste cannot be determined.

(v) The court may, in addition to the litter cleanup restitution payment, order the person to remove and properly dispose of the litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section if the person removes and properly disposes of the litter.

(4) If a junk vehicle is abandoned in violation of this chapter, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle.

(5) When enforcing this section, the enforcing authority must take reasonable action to determine and identify the person responsible for illegally dumping solid waste before requiring the owner or lessee of the property where illegal dumping of solid waste has occurred to remove and properly dispose of the litter on the site. [2011 c 279 § 1; 2001 c 139 § 2; 2000 c 154 § 3; 1998 c 36 § 19; 1997 c 427 § 4; 1993 c 292 § 3; 1969 ex.s. c 134 § 24.]

Intent—1998 c 36: See RCW 15.54.265.

Additional notes found at www.leg.wa.gov

Chapter 70.95J RCW

MUNICIPAL SEWAGE SLUDGE—BIOSOLIDS

Sections

70.95J.060 Violations—Punishment.

70.95J.060 Violations—Punishment. A person who willfully violates, without sufficient cause, any of the provisions of this chapter, or a permit or order issued pursuant to this chapter, is guilty of a gross misdemeanor. Willful violation of this chapter, or a permit or order issued pursuant to this chapter is a gross misdemeanor punishable by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment for up to three hundred sixty-four days, or by both. Each day of violation may be deemed a separate violation. [2011 c 96 § 50; 1992 c 174 § 8.]

[2011 RCW Supp—page 1368]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Chapter 70.96A RCW

TREATMENT FOR ALCOHOLISM, INTOXICATION, AND DRUG ADDICTION

Sections

70.96A.037 Chemical dependency specialist services—To be available at children and family services offices—Training in uniform screening. (*Effective January 1, 2012.*)

70.96A.350 Criminal justice treatment account.

70.96A.530 Assistance program benefits—Access to chemical dependency treatment. (*Expires June 30, 2013.*)

70.96A.037 Chemical dependency specialist services—To be available at children and family services offices—Training in uniform screening. (*Effective January 1, 2012.*)

(1) The department of social and health services shall contract for chemical dependency specialist services at division of children and family services offices to enhance the timeliness and quality of child protective services assessments and to better connect families to needed treatment services.

(2) The chemical dependency specialist's duties may include, but are not limited to: Conducting on-site chemical dependency screening and assessment, facilitating progress reports to department employees, in-service training of department employees and staff on substance abuse issues, referring clients from the department to treatment providers, and providing consultation on cases to department employees.

(3) The department of social and health services shall provide training in and ensure that each case-carrying employee is trained in uniform screening for mental health and chemical dependency. [2011 c 89 § 9; 2009 c 579 § 1; 2005 c 504 § 305.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96A.350 Criminal justice treatment account. (1) The criminal justice treatment account is created in the state treasury. Moneys in the account may be expended solely for: (a) Substance abuse treatment and treatment support services for offenders with an addiction or a substance abuse problem that, if not treated, would result in addiction, against whom charges are filed by a prosecuting attorney in Washington state; (b) the provision of drug and alcohol treatment services and treatment support services for nonviolent offenders within a drug court program; (c) the administrative and overhead costs associated with the operation of a drug court; and (d) during the 2007-2009 biennium, operation of the integrated crisis response and intensive case management pilots contracted with the department of social and health services division of alcohol and substance abuse. Moneys in the account may be spent only after appropriation.

(2) For purposes of this section:

(a) "Treatment" means services that are critical to a participant's successful completion of his or her substance abuse treatment program, but does not include the following services: Housing other than that provided as part of an inpatient substance abuse treatment program, vocational training, and mental health counseling; and

(b) "Treatment support" means transportation to or from inpatient or outpatient treatment services when no viable alternative exists, and child care services that are necessary to ensure a participant's ability to attend outpatient treatment sessions.

(3) Revenues to the criminal justice treatment account consist of: (a) Funds transferred to the account pursuant to this section; and (b) any other revenues appropriated to or deposited in the account.

(4)(a) For the fiscal biennium beginning July 1, 2003, the state treasurer shall transfer eight million nine hundred fifty thousand dollars from the general fund into the criminal justice treatment account, divided into eight equal quarterly payments. For the fiscal year beginning July 1, 2005, and each subsequent fiscal year, the state treasurer shall transfer eight million two hundred fifty thousand dollars from the general fund to the criminal justice treatment account, divided into four equal quarterly payments. For the fiscal year beginning July 1, 2006, and each subsequent fiscal year, the amount transferred shall be increased on an annual basis by the implicit price deflator as published by the federal bureau of labor statistics.

(b) In each odd-numbered year, the legislature shall appropriate the amount transferred to the criminal justice treatment account in (a) of this subsection to the division of alcohol and substance abuse for the purposes of subsection (5) of this section.

(5) Moneys appropriated to the division of alcohol and substance abuse from the criminal justice treatment account shall be distributed as specified in this subsection. The department shall serve as the fiscal agent for purposes of distribution. Until July 1, 2004, the department may not use moneys appropriated from the criminal justice treatment account for administrative expenses and shall distribute all amounts appropriated under subsection (4)(b) of this section in accordance with this subsection. Beginning in July 1, 2004, the department may retain up to three percent of the amount appropriated under subsection (4)(b) of this section for its administrative costs.

(a) Seventy percent of amounts appropriated to the division from the account shall be distributed to counties pursuant to the distribution formula adopted under this section. The division of alcohol and substance abuse, in consultation with the department of corrections, the Washington state association of counties, the Washington state association of drug court professionals, the superior court judges' association, the Washington association of prosecuting attorneys, representatives of the criminal defense bar, representatives of substance abuse treatment providers, and any other person deemed by the division to be necessary, shall establish a fair and reasonable methodology for distribution to counties of moneys in the criminal justice treatment account. County or regional plans submitted for the expenditure of formula funds must be approved by the panel established in (b) of this subsection.

(b) Thirty percent of the amounts appropriated to the division from the account shall be distributed as grants for purposes of treating offenders against whom charges are filed by a county prosecuting attorney. The division shall appoint a panel of representatives from the Washington association of prosecuting attorneys, the Washington association of sheriffs and police chiefs, the superior court judges' association, the Washington state association of counties, the Washington defender's association or the Washington association of criminal defense lawyers, the department of corrections, the Washington state association of drug court professionals, substance abuse treatment providers, and the division. The panel shall review county or regional plans for funding under (a) of this subsection and grants approved under this subsection. The panel shall attempt to ensure that treatment as funded by the grants is available to offenders statewide.

(6) The county alcohol and drug coordinator, county prosecutor, county sheriff, county superior court, a substance abuse treatment provider appointed by the county legislative authority, a member of the criminal defense bar appointed by the county legislative authority, and, in counties with a drug court, a representative of the drug court shall jointly submit a plan, approved by the county legislative authority or authorities, to the panel established in subsection (5)(b) of this section, for disposition of all the funds provided from the criminal justice treatment account within that county. The funds shall be used solely to provide approved alcohol and substance abuse treatment pursuant to RCW 70.96A.090, treatment support services, and for the administrative and overhead costs associated with the operation of a drug court.

(a) No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group of counties participating in a regional agreement shall be spent on the administrative and overhead costs associated with the operation of a drug court.

(b) No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group of counties participating in a regional agreement shall be spent for treatment support services.

(7) Counties are encouraged to consider regional agreements and submit regional plans for the efficient delivery of treatment under this section.

(8) Moneys allocated under this section shall be used to supplement, not supplant, other federal, state, and local funds used for substance abuse treatment.

(9) Counties must meet the criteria established in RCW 2.28.170(3)(b).

(10) The authority under this section to use funds from the criminal justice treatment account for the administrative and overhead costs associated with the operation of a drug court expires June 30, 2013. [2011 1st sp.s. c 40 § 34. Prior: 2009 c 479 § 50; 2009 c 445 § 1; 2008 c 329 § 918; 2003 c 379 § 11; 2002 c 290 § 4.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2009 c 479: See note following RCW 2.56.030.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Effective date—2002 c 290 §§ 1, 4-6, 12, 13, 26, and 27: "Sections 1, 4 through 6, 12, 13, 26, and 27 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 1, 2002]." [2002 c 290 § 32.]

Intent—2002 c 290: See note following RCW 9.94A.517.

Severability—2002 c 290: See RCW 9.94A.924.

70.96A.530 Assistance program benefits—Access to chemical dependency treatment. (Expires June 30, 2013.)

If an assessment by a certified chemical dependency counselor indicates a need for drug or alcohol treatment, in order to enable a person receiving benefits under RCW 74.62.030 and 43.185C.220 to improve his or her health status and transition from those benefits to employment, or transition to federal disability benefits, the person must be given high priority for enrollment in treatment, within funds appropriated for that treatment. However, first priority for receipt of treatment services must be given to pregnant women and parents of young children. This section expires June 30, 2013. [2011 1st sp.s. c 36 § 11; 2010 1st sp.s. c 8 § 10.]

Expiration date—2011 1st sp.s. c 36 § 11: "Section 11 of this act expires June 30, 2013." [2011 1st sp.s. c 36 § 37.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Effective date—2010 1st sp.s. c 8 § 10: "Section 10 of this act takes effect July 1, 2010." [2010 1st sp.s. c 8 § 35.]

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: See note following RCW 74.04.225.

Findings—Intent—Short title—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Chapter 70.96B RCW

INTEGRATED CRISIS RESPONSE AND INVOLUNTARY TREATMENT—PILOT PROGRAMS

Sections

70.96B.010 Definitions. (Effective January 1, 2012.)

70.96B.010 Definitions. (Effective January 1, 2012.)

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

(1) "Admission" or "admit" means a decision by a physician that a person should be examined or treated as a patient in a hospital, an evaluation and treatment facility, or other inpatient facility, or a decision by a professional person in charge or his or her designee that a person should be detained as a patient for evaluation and treatment in a secure detoxification facility or other certified chemical dependency provider.

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

(3) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department as meeting standards adopted under chapter 70.96A RCW.

(4) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient.

(5) "Chemical dependency" means:

(a) Alcoholism;

(b) Drug addiction; or

(c) Dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(6) "Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

(7) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting.

(8) "Conditional release" means a revocable modification of a commitment that may be revoked upon violation of any of its terms.

(9) "Custody" means involuntary detention under either chapter 71.05 or 70.96A RCW or this chapter, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment.

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

(11) "Designated chemical dependency specialist" or "specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in RCW 70.96A.140 and this chapter, and qualified to do so by meeting standards adopted by the department.

(12) "Designated crisis responder" means a person designated by the county or regional support network to perform the duties specified in this chapter.

(13) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter.

(14) "Detention" or "detain" means the lawful confinement of a person under this chapter, or chapter 70.96A or 71.05 RCW.

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

(16) "Developmental disability" means that condition defined in RCW 71A.10.020.

(17) "Discharge" means the termination of facility authority. The commitment may remain in place, be terminated, or be amended by court order.

(18) "Evaluation and treatment facility" means any facility that can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and that is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility that is part of, or operated by, the department or any federal agency does not require certification. No correctional institution or facility, or jail, may be an evaluation and treatment facility within the meaning of this chapter.

(19) "Facility" means either an evaluation and treatment facility or a secure detoxification facility.

(20) "Gravely disabled" means a condition in which a person, as a result of a mental disorder, or as a result of the use of alcohol or other psychoactive chemicals:

(a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or

(b) Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(21) "History of one or more violent acts" refers to the period of time ten years before the filing of a petition under this chapter, or chapter 70.96A or 71.05 RCW, excluding any time spent, but not any violent acts committed, in a mental health facility or a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction.

(22) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.

(23) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

(24) "Judicial commitment" means a commitment by a court under this chapter.

(25) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

(26) "Likelihood of serious harm" means:

(a) A substantial risk that:

(i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(ii) Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(iii) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts.

(27) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

(28) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

(29) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

(30) "Person in charge" means a physician or chemical dependency counselor as defined in rule by the department, who is empowered by a certified treatment program with authority to make assessment, admission, continuing care, and discharge decisions on behalf of the certified program.

(31) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, that constitutes an evaluation and treatment facility or private institution, or hospital, or approved treatment program, that is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill and/or chemically dependent.

(32) "Professional person" means a mental health professional or chemical dependency professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter.

(33) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.

(34) "Psychologist" means a person who has been licensed as a psychologist under chapter 18.83 RCW.

(35) "Public agency" means any evaluation and treatment facility or institution, or hospital, or approved treatment program that is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill and/or chemically dependent, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments.

(36) "Registration records" means all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(37) "Release" means legal termination of the commitment under chapter 70.96A or 71.05 RCW or this chapter.

(38) "Secretary" means the secretary of the department or the secretary's designee.

(39) "Secure detoxification facility" means a facility operated by either a public or private agency or by the program of an agency that serves the purpose of providing evaluation and assessment, and acute and/or subacute detoxification services for intoxicated persons and includes security measures sufficient to protect the patients, staff, and community.

(40) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

(41) "Treatment records" means registration records and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(42) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial dam-

age to property. [2011 c 89 § 10; 2008 c 320 § 3; 2005 c 504 § 202.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Chapter 70.97 RCW

ENHANCED SERVICES FACILITIES

Sections

70.97.010 Definitions. (*Effective January 1, 2012.*)

70.97.010 Definitions. (*Effective January 1, 2012.*)

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

(1) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

(2) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient.

(3) "Chemical dependency" means alcoholism, drug addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires and as those terms are defined in chapter 70.96A RCW.

(4) "Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

(5) "Commitment" means the determination by a court that an individual should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting.

(6) "Conditional release" means a modification of a commitment that may be revoked upon violation of any of its terms.

(7) "Custody" means involuntary detention under chapter 71.05 or 70.96A RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment.

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

(9) "Designated responder" means a designated mental health professional, a designated chemical dependency specialist, or a designated crisis responder as those terms are defined in chapter 70.96A, 71.05, or 70.96B RCW.

(10) "Detention" or "detain" means the lawful confinement of an individual under chapter 70.96A or 71.05 RCW.

(11) "Discharge" means the termination of facility authority. The commitment may remain in place, be terminated, or be amended by court order.

(12) "Enhanced services facility" means a facility that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues.

(13) "Expanded community services program" means a nonsecure program of enhanced behavioral and residential support provided to long-term and residential care providers serving specifically eligible clients who would otherwise be at risk for hospitalization at state hospital geriatric units.

(14) "Facility" means an enhanced services facility.

(15) "Gravely disabled" means a condition in which an individual, as a result of a mental disorder, as a result of the use of alcohol or other psychoactive chemicals, or both:

(a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or

(b) Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(16) "History of one or more violent acts" refers to the period of time ten years before the filing of a petition under this chapter, or chapter 70.96A or 71.05 RCW, excluding any time spent, but not any violent acts committed, in a mental health facility or a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction.

(17) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

(18) "Likelihood of serious harm" means:

(a) A substantial risk that:

(i) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(ii) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(iii) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(b) The individual has threatened the physical safety of another and has a history of one or more violent acts.

(19) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(20) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

(21) "Professional person" means a mental health professional and also means a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

(22) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.

(23) "Psychologist" means a person who has been licensed as a psychologist under chapter 18.83 RCW.

(24) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

(25) "Release" means legal termination of the commitment under chapter 70.96A or 71.05 RCW.

(26) "Resident" means a person admitted to an enhanced services facility.

(27) "Secretary" means the secretary of the department or the secretary's designee.

(28) "Significant change" means:

(a) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(b) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for release or for treatment in a less intensive or less secure setting.

(29) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

(30) "Treatment" means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to persons with mental disorders, chemical dependency disorders, or both, and their families.

(31) "Treatment records" include registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. "Treatment records" do not include notes or records maintained for personal use by an individual providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(32) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2011 c 89 § 11; 2005 c 504 § 403.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Chapter 70.105 RCW

HAZARDOUS WASTE MANAGEMENT

Sections

70.105.090 Violations—Gross misdemeanor.

70.105.090 Violations—Gross misdemeanor. In addition to the penalties imposed pursuant to RCW 70.105.080, any person who violates any provisions of this chapter, or of

the rules implementing this chapter, and any person who knowingly aids or abets another in conducting any violation of any provisions of this chapter, or of the rules implementing this chapter, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than ten thousand dollars, and/or by imprisonment in the county jail for up to three hundred sixty-four days, for each separate violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct offense. [2011 c 96 § 51; 1984 c 237 § 1; 1983 c 172 § 3; 1975-'76 2nd ex.s. c 101 § 9.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Additional notes found at www.leg.wa.gov

Chapter 70.105D RCW

HAZARDOUS WASTE CLEANUP— MODEL TOXICS CONTROL ACT

Sections

70.105D.070 Toxics control accounts.

70.105D.070 Toxics control accounts. (1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with

cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship;

(xii) Development and demonstration of alternative management technologies designed to carry out the hazardous waste management priorities of RCW 70.105.150;

(xiii) During the 2009-2011 and 2011-2013 fiscal biennia, shoreline update technical assistance;

(xiv) During the 2009-2011 fiscal biennium, multijurisdictional permitting teams; and

(xv) During the 2011-2013 fiscal biennium, actions for reducing public exposure to toxic air pollution.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority:

(i) Remedial actions;

(ii) Hazardous waste plans and programs under chapter 70.105 RCW;

(iii) Solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(iv) Funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and

(v) Cleanup and disposal of hazardous substances from abandoned or derelict vessels, defined for the purposes of this section as vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel, that pose a threat to human health or the environment.

(b) Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that is a Puget Sound partner, as defined in RCW 90.71.010, along with any project that is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, shall, except as conditioned by RCW 70.105D.120, receive priority for any available funding for any grant or funding programs or sources that use a competitive bidding process. During the 2007-2009 fiscal biennium, moneys in the account may also be used for grants to local governments to retrofit public sector diesel equipment and for storm water planning and implementation activities.

(c) To expedite cleanups throughout the state, the department shall partner with local communities and liable parties for cleanups. The department is authorized to use the following additional strategies in order to ensure a healthful environment for future generations:

(i) The director may alter grant-matching requirements to create incentives for local governments to expedite cleanups when one of the following conditions exists:

(A) Funding would prevent or mitigate unfair economic hardship imposed by the clean-up liability;

(B) Funding would create new substantial economic development, public recreational, or habitat restoration opportunities that would not otherwise occur; or

(C) Funding would create an opportunity for acquisition and redevelopment of vacant, orphaned, or abandoned property under RCW 70.105D.040(5) that would not otherwise occur;

(ii) The use of outside contracts to conduct necessary studies;

(iii) The purchase of remedial action cost-cap insurance, when necessary to expedite multiparty clean-up efforts.

(d) To facilitate and expedite cleanups using funds from the local toxics control account, during the 2009-2011 fiscal biennium the director may establish grant-funded accounts to hold and disperse local toxics control account funds and funds from local governments to be used for remedial actions.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) Except during the 2009-2011 fiscal biennium, one percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation, or, after January 1, 2010, for projects designed to address the restoration of Puget Sound, funded in a competitive grant process, that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(7) The department shall adopt rules for grant or loan issuance and performance.

(8) During the 2007-2009 and 2009-2011 fiscal biennia, the legislature may transfer from the local toxics control account to either the state general fund or the oil spill prevention account, or both such amounts as reflect excess fund balance in the account.

(9) During the 2009-2011 fiscal biennium, the local toxics control account may also be used for a standby rescue tug at Neah Bay, local government shoreline update grants, private and public sector diesel equipment retrofit, and oil spill prevention, preparedness, and response activities.

(10) During the 2009-2011 fiscal biennium, the legislature may transfer from the state toxics control account to the state general fund such amounts as reflect the excess fund balance in the account.

(11) During the 2011-2013 fiscal biennium, the local toxics control account may also be used for local government shoreline update grants and actions for reducing public exposure to toxic air pollution. [2011 1st sp.s. c 50 § 964; 2010 1st sp.s. c 37 § 942; 2009 c 564 § 951; 2009 c 187 § 5. Prior: 2008 c 329 § 921; 2008 c 329 § 920; 2008 c 329 § 919; 2008 c 328 § 6009; prior: 2007 c 522 § 954; 2007 c 520 § 6033; 2007 c 446 § 2; 2007 c 341 § 30; 2005 c 488 § 926; 2003 1st sp.s. c 25 § 933; 2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 § 923; prior: 1998 c 346 § 905; 1998 c 81 § 2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Part headings not law—Severability—Effective date—2007 c 520: See notes following RCW 43.19.125.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Part headings not law—Severability—Effective dates—2005 c 488: See notes following RCW 28B.50.360.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Finding—2001 c 27: "The legislature finds that there is an increasing number of derelict vessels that have been abandoned in the waters along the shorelines of the state. These vessels pose hazards to navigation and threaten the environment with the potential release of hazardous materials. There is no current federal program that comprehensively addresses this problem, and the legislature recognizes that the state must assist in providing a solution to this increasing hazard." [2001 c 27 § 1.]

Finding—Effective date—1994 c 252: See notes following RCW 70.119A.020.

Additional notes found at www.leg.wa.gov

Chapter 70.107 RCW NOISE CONTROL

Sections

70.107.030 Powers and duties of department.

70.107.030 Powers and duties of department. The department is empowered as follows:

(1) The department, after consultation with state agencies expressing an interest therein, shall adopt, by rule, maximum noise levels permissible in identified environments in order to protect against adverse affects of noise on the health, safety and welfare of the people, the value of property, and the quality of environment: PROVIDED, That in so doing the department shall take also into account the economic and practical benefits to be derived from the use of various prod-

ucts in each such environment, whether the source of the noise or the use of such products in each environment is permanent or temporary in nature, and the state of technology relative to the control of noise generated by all such sources of the noise or the products.

(2) At any time after the adoption of maximum noise levels under subsection (1) of this section the department shall, in consultation with state agencies and local governments expressing an interest therein, adopt rules, consistent with the Federal Noise Control Act of 1972 (86 Stat. 1234; 42 U.S.C. Sec. 4901-4918 and 49 U.S.C. Sec. 1431), for noise abatement and control in the state designed to achieve compliance with the noise level adopted in subsection (1) of this section, including reasonable implementation schedules where appropriate, to insure that the maximum noise levels are not exceeded and that application of the best practicable noise control technology and practice is provided. These rules may include, but shall not be limited to:

(a) Performance standards setting allowable noise limits for the operation of products which produce noise;

(b) Use standards regulating, as to time and place, the operation of individual products which produce noise above specified levels considering frequency spectrum and duration: PROVIDED, The rules shall provide for temporarily exceeding those standards for stated purposes; and

(c) Public information requirements dealing with disclosure of levels and characteristics of noise produced by products.

(3) The department may, as desirable in the performance of its duties under this chapter, conduct surveys, studies and public education programs, and enter into contracts.

(4) The department is authorized to apply for and accept moneys from the federal government and other sources to assist in the implementation of this chapter.

(5) The legislature recognizes that the operation of motor vehicles on public highways as defined in RCW 46.09.310 contributes significantly to environmental noise levels and directs the department, in exercising the rule-making authority under the provisions of this section, to give first priority to the adoption of motor vehicle noise performance standards.

(6) Noise levels and rules adopted by the department pursuant to this chapter shall not be effective prior to March 31, 1975. [2011 c 171 § 107; 1974 ex.s. c 183 § 3.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Chapter 70.119A RCW PUBLIC WATER SYSTEMS— PENALTIES AND COMPLIANCE

Sections

70.119A.110 Operating permits—Application process—Annual fee—Adoption of rules—Phase-in of implementation—Satellite systems.

70.119A.210 Fire sprinkler systems—Shutting off—Liability.

70.119A.110 Operating permits—Application process—Annual fee—Adoption of rules—Phase-in of implementation—Satellite systems. (1) No person may operate a group A public water system unless the person first submits an application to the department and receives an operating

permit as provided in this section. A new application must be submitted upon any change in ownership of the system.

(2) The department may require that each application include the information that is reasonable and necessary to determine that the system complies with applicable standards and requirements of the federal safe drinking water act, state law, and rules adopted by the department or by the state board of health.

(3) Following its review of the application, its supporting material, and any information received by the department in its investigation of the application, the department shall issue or deny the operating permit. The department shall act on initial permit applications as expeditiously as possible, and shall in all cases either grant or deny the application within one hundred twenty days of receipt of the application or of any supplemental information required to complete the application. The applicant for a permit shall be entitled to file an appeal in accordance with chapter 34.05 RCW if the department denies the initial or subsequent applications or imposes conditions or requirements upon the operator. Any operator of a public water system that requests a hearing may continue to operate the system until a decision is issued after the hearing.

(4) At the time of initial permit application or at the time of permit renewal the department may impose such permit conditions, requirements for system improvements, and compliance schedules as it determines are reasonable and necessary to ensure that the system will provide a safe and reliable water supply to its users.

(5) Operating permits shall be issued for a term of one year, and shall be renewed annually, unless the operator fails to apply for a new permit or the department finds good cause to deny the application for renewal.

(6) Each application shall be accompanied by an annual fee.

(7) The department shall adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this section.

(8) The department shall establish by rule categories of annual operating permit fees based on system size, complexity, and number of service connections. Fees charged must be sufficient to cover, but may not exceed, the costs to the department of administering a program for safe and reliable drinking water. The department shall use operating permit fees to monitor and enforce compliance by group A public water systems with state and federal laws that govern planning, water use efficiency, design, construction, operation, maintenance, financing, management, and emergency response.

(9) The annual per-connection fee may not exceed one dollar and fifty cents. The department shall phase-in implementation of any annual fee increase greater than ten percent, and shall establish the schedule for implementation by rule. Rules established by the department prior to 2020 must limit the annual operating permit fee for any public water system to no greater than one hundred thousand dollars.

(10) The department shall notify existing public water systems of the requirements of RCW 70.119A.030, 70.119A.060, and this section at least one hundred twenty days prior to the date that an application for a permit is required pursuant to RCW 70.119A.030, 70.119A.060, and this section.

(11) The department shall issue one operating permit to any approved satellite system management agency. Operating permit fees for approved satellite system management agencies must be established by the department by rule. Rules established by the department must set a single fee based on the total number of connections for all group A public water systems owned by a satellite management agency.

(12) For purposes of this section, "group A public water system" and "system" mean those water systems with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections. [2011 c 102 § 1; 2003 1st sp.s. c 5 § 18; 1991 c 304 § 5.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

Additional notes found at www.leg.wa.gov

70.119A.210 Fire sprinkler systems—Shutting off—Liability. (1) A person or purveyor that owns, operates, or maintains a public water system shall not be liable for damages resulting from shutting off water to a residential home with an installed fire sprinkler system if the shut off is due to: (a) Routine maintenance or construction; (b) nonpayment by the customer; or (c) a water system emergency.

(2) Any governmental or municipal corporation, including but not limited to special districts, shall be deemed to be exercising a governmental function when it acts or undertakes to supply water, within or without its corporate limits, to a residential home with an installed fire sprinkler system. [2011 c 331 § 4.]

Intent—2011 c 331: See note following RCW 82.02.100.

Chapter 70.120 RCW

MOTOR VEHICLE EMISSION CONTROL

Sections

- 70.120.010 Definitions.
- 70.120.160 Noncompliance areas—Annual review.
- 70.120.170 Motor vehicle emission inspections—Fees—Certificate of compliance—State and local agency vehicles. (*Expires January 1, 2020.*)

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

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology.

(3) "Fleet" means a group of fifteen or more motor vehicles registered in the same name and whose owner has been assigned a fleet identifier code by the department of licensing.

(4) "Motor vehicle" means any self-propelled vehicle required to be licensed pursuant to chapter 46.16A RCW.

(5) "Motor vehicle dealer" means a motor vehicle dealer, as defined in RCW 46.70.011, that is licensed pursuant to chapter 46.70 RCW.

(6) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(7) The terms "air contaminant," "air pollution," "air quality standard," "ambient air," "emission," and "emission standard" have the meanings given them in RCW 70.94.030. [2011 c 171 § 108; 1991 c 199 § 201; 1979 ex.s. c 163 § 1.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Finding—1991 c 199: See note following RCW 70.94.011.
Additional notes found at www.leg.wa.gov

70.120.160 Noncompliance areas—Annual review.

(1) The director shall review annually the air quality and forecasted air quality of each area in the state designated as a non-compliance area for motor vehicle emissions.

(2) An area shall no longer be designated as a non-compliance area if the director determines that:

(a) Air quality standards for contaminants derived from motor vehicle emissions are no longer being violated in the non-compliance area; and

(b) The standards would not be violated if the emission inspection system in the emission contributing area was discontinued and the requirements of RCW 46.16A.060 no longer applied. [2011 c 171 § 109; 1989 c 240 § 3.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

70.120.170 Motor vehicle emission inspections—Fees—Certificate of compliance—State and local agency vehicles. (Expires January 1, 2020.) (1) The department shall administer a system for emission inspections of all motor vehicles, except those described in RCW 46.16A.060(2), that are registered within the boundaries of each emission contributing area. Under such system a motor vehicle shall be inspected biennially except where an annual program would be required to meet federal law and prevent federal sanctions. In addition, motor vehicles shall be inspected at each change of registered owner of a registered vehicle as provided under RCW 46.16A.060.

(2) The director shall:

(a) Adopt procedures for conducting emission inspections of motor vehicles. The inspections may include idle and high revolution per minute emission tests. The emission test for diesel vehicles shall consist solely of a smoke opacity test.

(b) Adopt criteria for calibrating emission testing equipment. Electronic equipment used to test for emissions standards provided for in this chapter shall be properly calibrated. The department shall examine frequently the calibration of the emission testing equipment used at the stations.

(c) Authorize, through contracts, the establishment and operation of inspection stations for conducting vehicle emission inspections authorized in this chapter. No person contracted to inspect motor vehicles may perform for compensation repairs on any vehicles. No public body may establish or operate contracted inspection stations. Any contracts must comply with the procedures established for competitive bids in chapter 43.19 RCW.

(d) Beginning in 2012, authorize businesses other than those contracted to operate inspection stations under (c) of this subsection to conduct vehicle emission inspections. Businesses authorized under this subsection may also inspect and perform, for compensation, repairs on vehicles. The fee

limitations under subsection (4) of this section do not apply to the fee charged for a vehicle emissions inspection by a business authorized to conduct vehicle emission inspections under this subsection. The director may establish by rule a fee to be paid to the department for the oversight costs for each vehicle emission inspection performed by a business authorized under this subsection (2)(d).

(3) Subsection (2)(c) of this section does not apply to volunteer motor vehicle inspections under RCW 70.120.020(1) if the inspections are conducted for the following purposes:

(a) Auditing;

(b) Contractor evaluation;

(c) Collection of data for establishing calibration and performance standards; or

(d) Public information and education.

(4)(a) The director shall establish by rule the fee to be charged for emission inspections. The inspection fee shall be a standard fee applicable statewide or throughout an emission contributing area and shall be no greater than fifteen dollars. Surplus moneys collected from fees over the amount due the contractor shall be paid to the state and deposited in the general fund. Fees shall be set at the minimum whole dollar amount required to (i) compensate the contractor or inspection facility owner, and (ii) offset the general fund appropriation to the department to cover the administrative costs of the motor vehicle emission inspection program.

(b) Before each inspection, a person whose motor vehicle is to be inspected shall pay to the inspection station the fee established under this section. The person whose motor vehicle is inspected shall receive the results of the inspection. If the inspected vehicle complies with the standards established by the director, the person shall receive a dated certificate of compliance. If the inspected vehicle does not comply with those standards, one reinspection of the vehicle shall be afforded without charge.

(5) All units of local government and agencies of the state with motor vehicles garaged or regularly operated in an emissions contributing area shall test the emissions of those vehicles annually to ensure that the vehicle's emissions comply with the emission standards established by the director. All state agencies outside of emission contributing areas with more than twenty motor vehicles housed at a single facility or contiguous facilities shall test the emissions of those vehicles annually to ensure that the vehicles' emissions comply with standards established by the director. A report of the results of the tests shall be submitted to the department.

(6) This section expires January 1, 2020. [2011 c 171 § 110; 2005 c 295 § 6; 1998 c 342 § 4; 1991 c 199 § 208; 1989 c 240 § 4.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—2005 c 295: See note following RCW 70.120A.010.

Effective date—2005 c 295 §§ 5, 6, and 10: See note following RCW 70.94.017.

Finding—1991 c 199: See note following RCW 70.94.011.

Additional notes found at www.leg.wa.gov

Chapter 70.123 RCW
SHELTERS FOR VICTIMS OF
DOMESTIC VIOLENCE

Sections

70.123.110 Assistance to families in shelters.

70.123.110 Assistance to families in shelters. Aged, blind, or disabled assistance benefits, essential needs and housing support benefits, pregnant women assistance benefits, or temporary assistance for needy families payments shall be made to otherwise eligible individuals who are residing in a secure shelter, a housing network or other shelter facility which provides shelter services to persons who are victims of domestic violence. Provisions shall be made by the department for the confidentiality of the shelter addresses where victims are residing. [2011 1st sp.s. c 36 § 16; 2010 1st sp.s. c 8 § 16; 1997 c 59 § 9; 1979 ex.s. c 245 § 11.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Chapter 70.126 RCW

HOME HEALTH CARE AND HOSPICE CARE

Sections

70.126.020 Home health care—Services and supplies included, not included. (*Effective January 1, 2012.*)

70.126.020 Home health care—Services and supplies included, not included. (*Effective January 1, 2012.*) (1) Home health care shall be provided by a home health agency and shall:

(a) Be delivered by a registered nurse, physical therapist, occupational therapist, speech therapist, or home health aide on a part-time or intermittent basis;

(b) Include, as applicable under the written plan, supplies and equipment such as:

(i) Drugs and medicines that are legally obtainable only upon a physician's written prescription, and insulin;

(ii) Rental of durable medical apparatus and medical equipment such as wheelchairs, hospital beds, respirators, splints, trusses, braces, or crutches needed for treatment;

(iii) Supplies normally used for hospital inpatients and dispensed by the home health agency such as oxygen, catheters, needles, syringes, dressings, materials used in aseptic techniques, irrigation solutions, and intravenous fluids.

(2) The following services may be included when medically necessary, ordered by the attending physician, and included in the approved plan of treatment:

(a) Licensed practical nurses;

(b) Respiratory therapists;

(c) Social workers holding a master's degree or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(d) Ambulance service that is certified by the physician as necessary in the approved plan of treatment because of the patient's physical condition or for unexpected emergency situations.

[2011 RCW Supp—page 1378]

(3) Services not included in home health care include:
 (a) Nonmedical, custodial, or housekeeping services except by home health aides as ordered in the approved plan of treatment;

(b) "Meals on Wheels" or similar food services;

(c) Nutritional guidance;

(d) Services performed by family members;

(e) Services not included in an approved plan of treatment;

(f) Supportive environmental materials such as handrails, ramps, telephones, air conditioners, and similar appliances and devices. [2011 c 89 § 12; 1984 c 22 § 5; 1983 c 249 § 6.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Additional notes found at www.leg.wa.gov

Chapter 70.127 RCW

IN-HOME SERVICES AGENCIES

Sections

70.127.010 Definitions. (*Effective January 1, 2012.*)

70.127.040 Persons, activities, or entities not subject to regulation under chapter.

70.127.041 Repealed.

70.127.010 Definitions. (*Effective January 1, 2012.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrator" means an individual responsible for managing the operation of an agency.

(2) "Department" means the department of health.

(3) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by in-home health and hospice agencies.

(4) "Family" means individuals who are important to, and designated by, the patient or client and who need not be relatives.

(5) "Home care agency" means a person administering or providing home care services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A home care agency that provides delegated tasks of nursing under RCW 18.79.260(3)(e) is not considered a home health agency for the purposes of this chapter.

(6) "Home care services" means nonmedical services and assistance provided to ill, disabled, or vulnerable individuals that enable them to remain in their residences. Home care services include, but are not limited to: Personal care such as assistance with dressing, feeding, and personal hygiene to facilitate self-care; homemaker assistance with household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; respite care assistance and support provided to the family; or other nonmedical services or delegated tasks of nursing under RCW 18.79.260(3)(e).

(7) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering

or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(8) "Home health services" means services provided to ill, disabled, or vulnerable individuals. These services include but are not limited to nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

(9) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

(10) "Home medical supplies" or "equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

(11) "Hospice agency" means a person administering or providing hospice services directly or through a contract arrangement to individuals in places of temporary or permanent residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and a volunteer.

(12) "Hospice care center" means a homelike, noninstitutional facility where hospice services are provided, and that meets the requirements for operation under RCW 70.127.280.

(13) "Hospice services" means symptom and pain management provided to a terminally ill individual, and emotional, spiritual, and bereavement support for the individual and family in a place of temporary or permanent residence, and may include the provision of home health and home care services for the terminally ill individual.

(14) "In-home services agency" means a person licensed to administer or provide home health, home care, hospice services, or hospice care center services directly or through a contract arrangement to individuals in a place of temporary or permanent residence.

(15) "Person" means any individual, business, firm, partnership, corporation, company, association, joint stock association, public or private agency or organization, or the legal successor thereof that employs or contracts with two or more individuals.

(16) "Plan of care" means a written document based on assessment of individual needs that identifies services to meet these needs.

(17) "Quality improvement" means reviewing and evaluating appropriateness and effectiveness of services provided under this chapter.

(18) "Service area" means the geographic area in which the department has given prior approval to a licensee to provide home health, hospice, or home care services.

(19) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in RCW 18.320.010 or who meets qualifications

provided in 42 C.F.R. Sec. 418.114 as it existed on January 1, 2012.

(20) "Survey" means an inspection conducted by the department to evaluate and monitor an agency's compliance with this chapter. [2011 c 89 § 13; 2003 c 140 § 7; 2000 c 175 § 1; 1999 c 190 § 1; 1993 c 42 § 1; 1991 c 3 § 373; 1988 c 245 § 2.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Effective date—2003 c 140: See note following RCW 18.79.040.

Additional notes found at www.leg.wa.gov

70.127.040 Persons, activities, or entities not subject to regulation under chapter. The following are not subject to regulation for the purposes of this chapter:

(1) A family member providing home health, hospice, or home care services;

(2) A person who provides only meal services in an individual's permanent or temporary residence;

(3) An individual providing home care through a direct agreement with a recipient of care in an individual's permanent or temporary residence;

(4) A person furnishing or delivering home medical supplies or equipment that does not involve the provision of services beyond those necessary to deliver, set up, and monitor the proper functioning of the equipment and educate the user on its proper use;

(5) A person who provides services through a contract with a licensed agency;

(6) An employee or volunteer of a licensed agency who provides services only as an employee or volunteer;

(7) Facilities and institutions, including but not limited to nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41 RCW, adult family homes under chapter 70.128 RCW, boarding homes under chapter 18.20 RCW, developmental disability residential programs under chapter 71A.12 RCW, other entities licensed under chapter 71.12 RCW, or other licensed facilities and institutions, only when providing services to persons residing within the facility or institution;

(8) Local and combined city-county health departments providing services under chapters 70.05 and 70.08 RCW;

(9) An individual providing care to ill individuals, individuals with disabilities, or vulnerable individuals through a contract with the department of social and health services;

(10) Nursing homes, hospitals, or other institutions, agencies, organizations, or persons that contract with licensed home health, hospice, or home care agencies for the delivery of services;

(11) In-home assessments of an ill individual, an individual with a disability, or a vulnerable individual that does not result in regular ongoing care at home;

(12) Services conducted by and for the adherents of a church or religious denomination that rely upon spiritual means alone through prayer for healing in accordance with the tenets and practices of such church or religious denomination and the bona fide religious beliefs genuinely held by such adherents;

(13) A medicare-approved dialysis center operating a medicare-approved home dialysis program;

(14) A person providing case management services. For the purposes of this subsection, "case management" means the assessment, coordination, authorization, planning, training, and monitoring of home health, hospice, and home care, and does not include the direct provision of care to an individual;

(15) Pharmacies licensed under RCW 18.64.043 that deliver prescription drugs and durable medical equipment that does not involve the use of professional services beyond those authorized to be performed by licensed pharmacists pursuant to chapter 18.64 RCW and those necessary to set up and monitor the proper functioning of the equipment and educate the person on its proper use;

(16) A volunteer hospice complying with the requirements of RCW 70.127.050;

(17) A person who provides home care services without compensation; and

(18) Nursing homes that provide telephone or web-based transitional care management services. [2011 c 366 § 6. Prior: 2003 c 275 § 3; 2003 c 140 § 8; 2000 c 175 § 4; 1993 c 42 § 2; 1988 c 245 § 5.]

Findings—Purpose—Conflict with federal requirements—2011 c 366: See notes following RCW 18.20.020.

Effective date—2003 c 140: See note following RCW 18.79.040.

Additional notes found at www.leg.wa.gov

70.127.041 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 70.128 RCW ADULT FAMILY HOMES

Sections

70.128.005	Findings—Intent.
70.128.050	License—Required as of July 1, 1990—Limitations.
70.128.060	License—Generally—Fees.
70.128.065	Multiple facility operators—Requirements—Licensure of additional homes.
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70.128.120	Adult family home provider, applicant, resident manager—Minimum qualifications.
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70.128.130	Adult family homes—Requirements.
70.128.140	Compliance with local codes and state and local fire safety regulations.
70.128.160	Department authority to take actions in response to noncompliance or violations—Civil penalties—Adult family home account.
70.128.175	Repealed.
70.128.220	Elder care—Professionalization of providers.

70.128.005 Findings—Intent. (1) The legislature finds that:

(a) Adult family homes are an important part of the state's long-term care system. Adult family homes provide an alternative to institutional care and promote a high degree of independent living for residents.

(b) Persons with functional limitations have broadly varying service needs. Adult family homes that can meet those needs are an essential component of a long-term system. Different populations living in adult family homes, such as persons with developmental disabilities and elderly persons, often have significantly different needs and capacities from one another.

[2011 RCW Supp—page 1380]

(c) There is a need to update certain restrictive covenants to take into consideration the legislative findings cited in (a) and (b) of this subsection; the need to prevent or reduce institutionalization; and the legislative and judicial mandates to provide care and services in the least restrictive setting appropriate to the needs of the individual. Restrictive covenants which directly or indirectly restrict or prohibit the use of property for adult family homes (i) are contrary to the public interest served by establishing adult family homes and (ii) discriminate against individuals with disabilities in violation of RCW 49.60.224.

(2) It is the legislature's intent that department rules and policies relating to the licensing and operation of adult family homes recognize and accommodate the different needs and capacities of the various populations served by the homes. Furthermore, the development and operation of adult family homes that promote the health, welfare, and safety of residents, and provide quality personal care and special care services should be encouraged.

(3) The legislature finds that many residents of community-based long-term care facilities are vulnerable and their health and well-being are dependent on their caregivers. The quality, skills, and knowledge of their caregivers are the key to good care. The legislature finds that the need for well-trained caregivers is growing as the state's population ages and residents' needs increase. The legislature intends that current training standards be enhanced.

(4) The legislature finds that the state of Washington has a compelling interest in developing and enforcing standards that promote the health, welfare, and safety of vulnerable adults residing in adult family homes. The health, safety, and well-being of vulnerable adults must be the paramount concern in determining whether to issue a license to an applicant, whether to suspend or revoke a license, or whether to take other licensing actions. [2011 1st sp.s. c 3 § 201; 2009 c 530 § 2; 2001 c 319 § 1; 2000 c 121 § 4; 1995 c 260 § 1; 1989 c 427 § 14.]

Finding—Intent—2011 1st sp.s. c 3: "The legislature finds that Washington's long-term care system should more aggressively promote protections for the vulnerable populations it serves. The legislature intends to address current statutes and funding levels that limit the department of social and health services' ability to promote vulnerable adult protections. The legislature further intends that the cost of facility oversight should be supported by an appropriate license fee paid by the regulated businesses, rather than by the general taxpayers." [2011 1st sp.s. c 3 § 101.]

70.128.050 License—Required as of July 1, 1990—Limitations. (1) After July 1, 1990, no person shall operate or maintain an adult family home in this state without a license under this chapter.

(2) Couples legally married or state registered domestic partners:

(a) May not apply for separate licenses; and

(b) May apply jointly to be coproviders if they are both qualified. One person may apply to be a provider without requiring the other person to apply. [2011 1st sp.s. c 3 § 202; 1989 c 427 § 19.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

70.128.060 License—Generally—Fees. (1) An application for license shall be made to the department upon forms

provided by it and shall contain such information as the department reasonably requires.

(2) Subject to the provisions of this section, the department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter. The department may not issue a license if (a) the applicant or a person affiliated with the applicant has prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past ten years that resulted in revocation, suspension, or nonrenewal of a license or contract with the department; or (b) the applicant or a person affiliated with the applicant has a history of significant noncompliance with federal, state, or local laws, rules, or regulations relating to the provision of care or services to vulnerable adults or to children. A person is considered affiliated with an applicant if the person is listed on the license application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse of the applicant.

(3) The license fee shall be submitted with the application.

(4) Proof of financial solvency must be submitted when requested by the department.

(5) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter 34.05 RCW by requesting a hearing in writing within twenty-eight days after receipt of the notice of denial.

(6) The department shall not issue a license to a provider if the department finds that the provider or spouse of the provider or any partner, officer, director, managerial employee, or majority owner has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children.

(7) The department shall license an adult family home for the maximum level of care that the adult family home may provide. The department shall define, in rule, license levels based upon the education, training, and caregiving experience of the licensed provider or staff.

(8) The department shall establish, by rule, standards used to license nonresident providers and multiple facility operators.

(9) The department shall establish, by rule, for multiple facility operators educational standards substantially equivalent to recognized national certification standards for residential care administrators.

(10) At the time of an application for an adult family home license and upon the annual fee renewal date set by the department, the licensee shall pay a license fee. Beginning July 1, 2011, the per bed license fee and any processing fees, including the initial license fee, must be established in the omnibus appropriations act and any amendment or additions made to that act. The license fees established in the omnibus appropriations act and any amendment or additions made to that act may not exceed the department's annual licensing and oversight activity costs and must include the department's cost of paying providers for the amount of the license fee attributed to medicaid clients.

(11) A provider who receives notification of the department's initiation of a denial, suspension, nonrenewal, or revocation of an adult family home license may, in lieu of appealing the department's action, surrender or relinquish the license. The department shall not issue a new license to or contract with the provider, for the purposes of providing care to vulnerable adults or children, for a period of twenty years following the surrendering or relinquishment of the former license. The licensing record shall indicate that the provider relinquished or surrendered the license, without admitting the violations, after receiving notice of the department's initiation of a denial, suspension, nonrenewal, or revocation of a license.

(12) The department shall establish, by rule, the circumstances requiring a change in the licensed provider, which include, but are not limited to, a change in ownership or control of the adult family home or provider, a change in the provider's form of legal organization, such as from sole proprietorship to partnership or corporation, and a dissolution or merger of the licensed entity with another legal organization. The new provider is subject to the provisions of this chapter, the rules adopted under this chapter, and other applicable law. In order to ensure that the safety of residents is not compromised by a change in provider, the new provider is responsible for correction of all violations that may exist at the time of the new license. [2011 1st sp.s. c 3 § 403; 2009 c 530 § 5; 2004 c 140 § 3; 2001 c 193 § 9; 1995 c 260 § 4; 1989 c 427 § 20.]

Effective date—2011 1st sp.s. c 3 §§ 401-403: See note following RCW 18.51.050.

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

70.128.065 Multiple facility operators—Requirements—Licensure of additional homes. (1) A multiple facility operator must successfully demonstrate to the department financial solvency and management experience for the homes under its ownership and the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes.

(2) The department shall only accept an application for licensure of an additional home when:

(a) A period of no less than twenty-four months has passed since the issuance of the initial adult family home license; and

(b) The department has taken no enforcement actions against the applicant's currently licensed adult family homes during the twenty-four months prior to application.

(3) The department shall only accept an additional application for licensure of other adult family homes when twelve months has passed since the previous adult family home license, and the department has taken no enforcement actions against the applicant's currently licensed adult family homes during the twelve months prior to application.

(4) In the event of serious noncompliance leading to the imposition of one or more actions listed in RCW 70.128.160(2) for violation of federal, state, or local laws, or regulations relating to provision of care or services to vulnerable adults or children, the department is authorized to take

one or more actions listed in RCW 70.128.160(2) against any home or homes operated by the provider if there is a violation in the home or homes.

(5) In the event of serious noncompliance in a home operated by a provider with multiple adult family homes, leading to the imposition of one or more actions listed in RCW 70.128.160(2), the department shall inspect the other homes operated by the provider to determine whether the same or related deficiencies are present in those homes. The cost of these additional inspections may be imposed on the provider as a civil penalty up to a maximum of three hundred dollars per additional inspection.

(6) A provider is ultimately responsible for the day-to-day operations of each licensed home. [2011 1st sp.s. c 3 § 203; 1996 c 81 § 6.]

Reviser's note: 1996 c 81 directed that this section be added to chapter 18.48 RCW. However, it appears that placement is erroneous and the appropriate placement is in chapter 70.128 RCW.

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

70.128.070 License—Inspections—Correction of violations. (1) A license shall remain valid unless voluntarily surrendered, suspended, or revoked in accordance with this chapter.

(2)(a) Homes applying for a license shall be inspected at the time of licensure.

(b) Homes licensed by the department shall be inspected at least every eighteen months, with an annual average of fifteen months. However, an adult family home may be allowed to continue without inspection for two years if the adult family home had no inspection citations for the past three consecutive inspections and has received no written notice of violations resulting from complaint investigations during that same time period.

(c) The department may make an unannounced inspection of a licensed home at any time to assure that the home and provider are in compliance with this chapter and the rules adopted under this chapter.

(3) If the department finds that the home is not in compliance with this chapter, it shall require the home to correct any violations as provided in this chapter. [2011 1st sp.s. c 3 § 204; 2004 c 143 § 1; 1998 c 272 § 4; 1995 1st sp.s. c 18 § 22; 1989 c 427 § 22.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Findings—Severability—Effective date—1998 c 272: See notes following RCW 18.20.230.

Additional notes found at www.leg.wa.gov

70.128.120 Adult family home provider, applicant, resident manager—Minimum qualifications. Each adult family home provider, applicant, and each resident manager shall have the following minimum qualifications, except that only applicants are required to meet the provisions of subsections (10) and (11) of this section:

(1) Twenty-one years of age or older;

(2) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, a United States

high school diploma or general educational development (GED) certificate or any English or translated government documentation of the following:

(a) Successful completion of government-approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction over twelve years or no less than twelve thousand hours of instruction;

(b) A foreign college, foreign university, or United States community college two-year diploma;

(c) Admission to, or completion of coursework at, a foreign university or college for which credit was granted;

(d) Admission to, or completion of coursework at, a United States college or university for which credits were awarded;

(e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education preparation was required;

(3) Good moral and responsible character and reputation;

(4) Literacy and the ability to communicate in the English language;

(5) Management and administrative ability to carry out the requirements of this chapter;

(6) Satisfactory completion of department-approved basic training and continuing education training as required by RCW 74.39A.073, and in rules adopted by the department;

(7) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;

(8) Not been convicted of any crime that is disqualifying under RCW 43.43.830 or 43.43.842, or department rules adopted under this chapter, or been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult as specified in RCW 74.39A.050(8);

(9) For those applying to be licensed as providers, and for resident managers whose employment begins after August 24, 2011, at least one thousand hours in the previous sixty months of successful, direct caregiving experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting prior to operating or managing an adult family home. The applicant or resident manager must have credible evidence of the successful, direct caregiving experience or, currently hold one of the following professional licenses: Physician licensed under chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57 RCW; osteopathic physician assistant licensed under chapter 18.57A RCW; physician assistant licensed under chapter 18.71A RCW; registered nurse, advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW;

(10) For applicants, proof of financial solvency, as defined in rule; and

(11) Applicants must successfully complete an adult family home administration and business planning class, prior to being granted a license. The class must be a mini-

num of forty-eight hours of classroom time and approved by the department. The department shall promote and prioritize bilingual capabilities within available resources and when materials are available for this purpose. [2011 1st sp.s. c 3 § 205; 2006 c 249 § 1; 2002 c 223 § 1; 2001 c 319 § 8; 2000 c 121 § 5; 1996 c 81 § 1; 1995 1st sp.s. c 18 § 117; 1995 c 260 § 5; 1989 c 427 § 24.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Effective date—2002 c 223 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 223 § 7.]

Additional notes found at www.leg.wa.gov

70.128.125 Resident rights. RCW 70.129.005 through 70.129.030, 70.129.040, and 70.129.050 through 70.129.170 apply to this chapter and persons regulated under this chapter. [2011 1st sp.s. c 3 § 302; 1994 c 214 § 24.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

70.128.130 Adult family homes—Requirements. (1) The provider is ultimately responsible for the day-to-day operations of each licensed adult family home.

(2) The provider shall promote the health, safety, and well-being of each resident residing in each licensed adult family home.

(3) Adult family homes shall be maintained internally and externally in good repair and condition. Such homes shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, artificial and natural light, ventilation, and any other feature of the home.

(4) In order to preserve and promote the residential home-like nature of adult family homes, adult family homes licensed after August 24, 2011, shall:

(a) Have sufficient space to accommodate all residents at one time in the dining and living room areas;

(b) Have hallways and doorways wide enough to accommodate residents who use mobility aids such as wheelchairs and walkers; and

(c) Have outdoor areas that are safe and accessible for residents to use.

(5) The adult family home must provide all residents access to resident common areas throughout the adult family home including, but not limited to, kitchens, dining and living areas, and bathrooms, to the extent that they are safe under the resident's care plan.

(6) Adult family homes shall be maintained in a clean and sanitary manner, including proper sewage disposal, food handling, and hygiene practices.

(7) Adult family homes shall develop a fire drill plan for emergency evacuation of residents, shall have working smoke detectors in each bedroom where a resident is located, shall have working fire extinguishers on each floor of the home, and shall not keep nonambulatory patients above the first floor of the home.

(8) The adult family home shall ensure that all residents can be safely evacuated in an emergency.

(9) Adult family homes shall have clean, functioning, and safe household items and furnishings.

(10) Adult family homes shall provide a nutritious and balanced diet and shall recognize residents' needs for special diets.

(11) Adult family homes shall establish health care procedures for the care of residents including medication administration and emergency medical care.

(a) Adult family home residents shall be permitted to self-administer medications.

(b) Adult family home providers may administer medications and deliver special care only to the extent authorized by law.

(12) Adult family home providers shall either: (a) Reside at the adult family home; or (b) employ or otherwise contract with a qualified resident manager to reside at the adult family home. The department may exempt, for good cause, a provider from the requirements of this subsection by rule.

(13) A provider will ensure that any volunteer, student, employee, or person residing within the adult family home who will have unsupervised access to any resident shall not have been convicted of a crime listed under RCW 43.43.830 or 43.43.842, or been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult as specified in RCW 74.39A.050(8). A provider may conditionally employ a person pending the completion of a criminal conviction background inquiry, but may not allow the person to have unsupervised access to any resident.

(14) A provider shall offer activities to residents under care as defined by the department in rule.

(15) An adult family home must be financially solvent, and upon request for good cause, shall provide the department with detailed information about the home's finances. Financial records of the adult family home may be examined when the department has good cause to believe that a financial obligation related to resident care or services will not be met.

(16) An adult family home provider must ensure that staff are competent and receive necessary training to perform assigned tasks. Staff must satisfactorily complete department-approved staff orientation, basic training, and continuing education as specified by the department by rule. The provider shall ensure that a qualified caregiver is on-site whenever a resident is at the adult family home. Notwithstanding RCW 70.128.230, until orientation and basic training are successfully completed, a caregiver may not provide hands-on personal care to a resident without on-site supervision by a person who has successfully completed basic training or been exempted from the training pursuant to statute.

(17) The provider and resident manager must assure that there is:

(a) A mechanism to communicate with the resident in his or her primary language either through a qualified person on-site or readily available at all times, or other reasonable accommodations, such as language lines; and

(b) Staff on-site at all times capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read and understand resident care plans. [2011 1st sp.s. c 3 § 206; 2000 c 121 § 6; 1995 c 260 § 6; 1989 c 427 § 26.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

70.128.140 Compliance with local codes and state and local fire safety regulations. (1) Each adult family home shall meet applicable local licensing, zoning, building, and housing codes, and state and local fire safety regulations as they pertain to a single-family residence. It is the responsibility of the home to check with local authorities to ensure all local codes are met.

(2) An adult family home must be considered a residential use of property for zoning and public and private utility rate purposes. Adult family homes are a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single-family dwellings. [2011 1st sp.s. c 3 § 207; 1995 1st sp.s. c 18 § 26; 1989 c 427 § 27.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

70.128.160 Department authority to take actions in response to noncompliance or violations—Civil penalties—Adult family home account. (1) The department is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that an adult family home provider has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated an adult family home without a license or under a revoked license;

(c) Knowingly or with reason to know made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a license;

(b) Impose reasonable conditions on a license, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(c) Impose civil penalties of at least one hundred dollars per day per violation;

(d) Impose civil penalties of up to three thousand dollars for each incident that violates adult family home licensing laws and rules, including, but not limited to, chapters 70.128, 70.129, 74.34, and 74.39A RCW and related rules. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty;

(e) Impose civil penalties of up to ten thousand dollars for a current or former licensed provider who is operating an unlicensed home;

(f) Suspend, revoke, or refuse to renew a license; or

(g) Suspend admissions to the adult family home by imposing stop placement.

(3) When the department orders stop placement, the facility shall not admit any person until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing

home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement, the previous stop placement shall remain in effect until the new stop placement is imposed.

(4) After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(5) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing license suspension, stop placement, or conditions for continuation of a license are effective immediately upon notice and shall continue in effect pending any hearing.

(6) A separate adult family home account is created in the custody of the state treasurer. All receipts from civil penalties imposed under this chapter must be deposited into the account. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. The department shall use the special account only for promoting the quality of life and care of residents living in adult family homes.

(7) The department shall by rule specify criteria as to when and how the sanctions specified in this section must be applied. The criteria must provide for the imposition of incrementally more severe penalties for deficiencies that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of one or more residents. The criteria shall be tiered such that those homes consistently found to have deficiencies will be subjected to increasingly severe penalties. The department shall implement prompt and specific enforcement remedies without delay for providers found to have delivered care or failed to deliver care resulting in problems that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of one or more residents. In the selection of remedies, the health, safety, and well-being of residents must be of paramount importance. [2011 1st sp.s. c 3 § 208; 2001 c 193 § 5; 1995 1st sp.s. c 18 § 28; 1989 c 427 § 31.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

70.128.175 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.128.220 Elder care—Professionalization of providers. Adult family homes have developed rapidly in response to the health and social needs of the aging population in community settings, especially as the aging population has increased in proportion to the general population. The growing demand for elder care with a new focus on issues affecting senior citizens, including persons with developmental disabilities, mental illness, or dementia, has prompted a growing professionalization of adult family home providers to address quality care and quality of life issues consistent with standards of accountability and regulatory safeguards for the health and safety of the residents. [2011 1st sp.s. c 3 § 209; 2002 c 223 § 3; 1998 c 272 § 9.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Findings—Severability—Effective date—1998 c 272: See notes following RCW 18.20.230.

Chapter 70.129 RCW

LONG-TERM CARE RESIDENT RIGHTS

Sections

70.129.040 Protection of resident's funds—Financial affairs rights.

70.129.040 Protection of resident's funds—Financial affairs rights. (1) The resident has the right to manage his or her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

(2) Upon written authorization of a resident, if the facility agrees to manage the resident's personal funds, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as specified in this section.

(a) The facility must deposit a resident's personal funds in excess of one hundred dollars in an interest-bearing account or accounts that is separate from any of the facility's operating accounts, and that credits all interest earned on residents' funds to that account. In pooled accounts, there must be a separate accounting for each resident's share.

(b) The facility must maintain a resident's personal funds that do not exceed one hundred dollars in a noninterest-bearing account, interest-bearing account, or petty cash fund.

(3) The facility must establish and maintain a system that assures a full and complete and separate accounting of each resident's personal funds entrusted to the facility on the resident's behalf.

(a) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(b) The individual financial record must be available on request to the resident or his or her legal representative.

(4) Upon the death of a resident with personal funds deposited with the facility, the facility must convey within thirty days the resident's funds, and a final accounting of

those funds, to the individual or probate jurisdiction administering the resident's estate; but in the case of a resident who received long-term care services paid for by the state, the funds and accounting shall be sent to the state of Washington, department of social and health services, office of financial recovery. The department shall establish a release procedure for use for burial expenses.

(5) If any funds in excess of one hundred dollars are paid to an adult family home by the resident or a representative of the resident, as a security deposit for performance of the resident's obligations, or as prepayment of charges beyond the first month's residency, the funds shall be deposited by the adult family home in an interest-bearing account that is separate from any of the home's operating accounts, and that credits all interest earned on the resident's funds to that account. In pooled accounts, there must be a separate accounting for each resident's share. The account or accounts shall be in a financial institution as defined by RCW 30.22.041, and the resident shall be notified in writing of the name, address, and location of the depository. The adult family home may not commingle resident funds from these accounts with the adult family home's funds or with the funds of any person other than another resident. The individual resident's account record shall be available upon request by the resident or the resident's representative.

(6) The adult family home shall provide the resident or the resident's representative full disclosure in writing, prior to the receipt of any funds for a deposit, security, prepaid charges, or any other fees or charges, specifying what the funds are paid for and the basis for retaining any portion of the funds if the resident dies, is hospitalized, or is transferred or discharged from the adult family home. The disclosure must be in a language that the resident or the resident's representative understands, and be acknowledged in writing by the resident or the resident's representative. The adult family home shall retain a copy of the disclosure and the acknowledgment. The adult family home may not retain funds for reasonable wear and tear by the resident or for any basis that would violate RCW 70.129.150.

(7) Funds paid by the resident or the resident's representative to the adult family home, which the adult family home in turn pays to a placement agency or person, shall be governed by the disclosure requirements of this section. If the resident then dies, is hospitalized, or is transferred or discharged from the adult family home, and is entitled to any refund of funds under this section or RCW 70.129.150, the adult family home shall refund the funds to the resident or the resident's representative within thirty days of the resident leaving the adult family home, and may not require the resident to obtain the refund from the placement agency or person.

(8) If, during the stay of the resident, the status of the adult family home licensee or ownership is changed or transferred to another, any funds in the resident's accounts affected by the change or transfer shall simultaneously be deposited in an equivalent account or accounts by the successor or new licensee or owner, who shall promptly notify the resident or the resident's representative in writing of the name, address, and location of the new depository.

(9) Because it is a matter of great public importance to protect residents who need long-term care from deceptive

disclosures and unfair retention of deposits, fees, or prepaid charges by adult family homes, a violation of this section or RCW 70.129.150 shall be construed for purposes of the consumer protection act, chapter 19.86 RCW, to constitute an unfair or deceptive act or practice or an unfair method of competition in the conduct of trade or commerce. The resident's claim to any funds paid under this section shall be prior to that of any creditor of the adult family home, its owner, or licensee, even if such funds are commingled. [2011 1st sp.s. c 3 § 301; 1995 1st sp.s. c 18 § 66; 1994 c 214 § 5.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

Chapter 70.138 RCW INCINERATOR ASH RESIDUE

Sections

70.138.070 Criminal penalties.

70.138.070 Criminal penalties. Any person found guilty of wilfully violating, without sufficient cause, any of the provisions of this chapter, or permit or order issued pursuant to this chapter is guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment for up to three hundred sixty-four days, or by both. Each day of violation may be deemed a separate violation. [2011 c 96 § 52; 1987 c 528 § 7.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Chapter 70.168 RCW STATEWIDE TRAUMA CARE SYSTEM

Sections

70.168.020 Steering committee—Composition—Appointment.
70.168.040 Emergency medical services and trauma care system trust account.

70.168.020 Steering committee—Composition—Appointment. (1) There is hereby created an emergency medical services and trauma care steering committee composed of representatives of individuals knowledgeable in emergency medical services and trauma care, including emergency medical providers such as physicians, nurses, hospital personnel, emergency medical technicians, paramedics, ambulance services, a member of the emergency medical services licensing and certification advisory committee, local government officials, state officials, consumers, and persons affiliated professionally with health science schools. The secretary shall appoint members of the steering committee. Members shall be appointed for a period of three years. The department shall provide administrative support to the committee. All appointive members of the committee, in the performance of their duties, may be entitled to receive travel expenses as provided in RCW 43.03.050 and 43.03.060. The secretary may remove members from the committee who have three unexcused absences from committee meetings. The secretary shall fill any vacancies of the

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committee in a timely manner. The terms of those members representing the same field shall not expire at the same time.

The committee shall elect a chair and a vice-chair whose terms of office shall be for one year each. The chair shall be ineligible for reelection after serving four consecutive terms.

The committee shall meet on call by the secretary or the chair.

(2) The emergency medical services and trauma care steering committee shall:

(a) Advise the department regarding emergency medical services and trauma care needs throughout the state.

(b) Review the regional emergency medical services and trauma care plans and recommend changes to the department before the department adopts the plans.

(c) Review proposed departmental rules for emergency medical services and trauma care.

(d) Recommend modifications in rules regarding emergency medical services and trauma care. [2011 1st sp.s. c 21 § 28; 2000 c 93 § 20; 1990 c 269 § 5; 1988 c 183 § 2.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

70.168.040 Emergency medical services and trauma care system trust account. The emergency medical services and trauma care system trust account is hereby created in the state treasury. Moneys shall be transferred to the emergency medical services and trauma care system trust account from the public safety education account or other sources as appropriated, and as collected under RCW 46.63.110(7) and 46.68.440. Disbursements shall be made by the department subject to legislative appropriation. Expenditures may be made only for the purposes of the state trauma care system under this chapter, including emergency medical services, trauma care services, rehabilitative services, and the planning and development of related services under this chapter and for reimbursement by the health care authority for trauma care services provided by designated trauma centers. [2011 1st sp.s. c 15 § 86; 2010 c 161 § 1158; 2002 c 371 § 922; 1997 c 331 § 2; 1990 c 269 § 17; 1988 c 183 § 4.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Additional notes found at www.leg.wa.gov

Chapter 70.190 RCW FAMILY POLICY COUNCIL

Sections

70.190.005 Repealed. (*Effective June 30, 2012.*)
70.190.010 Repealed. (*Effective June 30, 2012.*)
70.190.020 Repealed. (*Effective June 30, 2012.*)
70.190.040 Recodified as RCW 28A.300.555.
70.190.100 Repealed. (*Effective June 30, 2012.*)
70.190.110 Repealed. (*Effective June 30, 2012.*)
70.190.120 Repealed. (*Effective June 30, 2012.*)
70.190.130 Repealed. (*Effective June 30, 2012.*)
70.190.150 Repealed. (*Effective June 30, 2012.*)
70.190.920 Repealed. (*Effective June 30, 2012.*)

70.190.005 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.190.010 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.190.020 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.190.040 Recodified as RCW 28A.300.555. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.190.100 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.190.110 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.190.120 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.190.130 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.190.150 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.190.920 Repealed. (*Effective June 30, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 70.210 RCW

INVESTING IN INNOVATION GRANTS PROGRAM

Sections

70.210.010	Intent.
70.210.020	Definitions.
70.210.030	Assessments.
70.210.040	Loan or grant award criteria.
70.210.050	Peer review committee—Support of research commercialization opportunities—Grant and loan awards, priority, eligibility.
70.210.060	Performance benchmarks, review, report.
70.210.070	Recodified as RCW 43.333.050.

70.210.010 Intent. It is the intent of the legislature to promote growth in the technology sectors of our state's economy and to particularly focus support on the commercialization of intellectual property and the manufacture of innovative products in the state. [2011 1st sp.s. c 14 § 7; 2003 c 403 § 1.]

Effective date—2011 1st sp.s. c 14: See RCW 43.333.901.

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

(1) "Board" means the innovate Washington board of directors.

(3) [(2)] "Innovate Washington" means the agency created in RCW 43.333.010. [2011 1st sp.s. c 14 § 8; 2003 c 403 § 2.]

70.210.030 Assessments. (1) The investing in innovation program is established.

(2) Innovate Washington shall periodically make strategic assessments of the types of investments in research, technology, and industrial development in this state that would likely create new products, jobs, and business opportunities and produce the most beneficial long-term improvements to the lives and health of the citizens of the state. The assessments shall be available to the public and shall be used to guide decisions on awarding funds under this chapter. [2011 1st sp.s. c 14 § 9; 2003 c 403 § 4.]

Effective date—2011 1st sp.s. c 14: See RCW 43.333.901.

70.210.040 Loan or grant award criteria. The board shall:

(1) Develop criteria for the awarding of loans or grants to qualifying universities, institutions, businesses, or individuals;

(2) Make decisions regarding distribution of funds;

(3) In making funding decisions and to the extent that economic impact is not diminished, provide priority to enterprises that:

(a) Were created through, and have existing intellectual property agreements in place with, public and private research institutions in the state; and

(b) Intend to produce new products or services, develop or expand facilities, or manufacture in the state; and

(4) Specify in contracts awarding funds that recipients must utilize funding received to support operations in the state of Washington and must subsequently report on the impact of their research, development, and any subsequent production activities within Washington for a period of ten years following the award of funds, and that a failure to comply with this requirement will obligate the recipient to return the amount of the award plus interest as determined by the board. [2011 1st sp.s. c 14 § 10; 2003 c 403 § 5.]

Effective date—2011 1st sp.s. c 14: See RCW 43.333.901.

70.210.050 Peer review committee—Support of research commercialization opportunities—Grant and loan awards, priority, eligibility. (1) The board may accept grant and loan proposals and establish a competitive process for the awarding of grants and loans.

(2) The board shall establish a peer review committee to include board members, scientists, engineers, and individuals with specific recognized expertise. The peer review committee shall provide to the board an independent peer review of all proposals determined to be competitive for a loan or grant award that are submitted to the board.

(3) In the awarding of grants and loans, priority shall be given to proposals that leverage additional private and public funding resources.

(4) Innovate Washington may not be a direct recipient of funding under this chapter. [2011 1st sp.s. c 14 § 11; 2003 c 403 § 6.]

Effective date—2011 1st sp.s. c 14: See RCW 43.333.901.

70.210.060 Performance benchmarks, review, report. The board shall establish performance benchmarks against which the program will be evaluated. The program shall be reviewed periodically by the board. The board shall report annually to the appropriate standing committees of the legislature on loans made and grants awarded and as appropriate on program reviews conducted by the board. [2011 1st sp.s. c 14 § 12; 2003 c 403 § 7.]

Effective date—2011 1st sp.s. c 14: See RCW 43.333.901.

70.210.070 Recodified as RCW 43.333.050. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 70.225 RCW

PRESCRIPTION MONITORING PROGRAM

Sections

70.225.040 Confidentiality of prescription information—Procedures—Immunity when acting in good faith.

70.225.040 Confidentiality of prescription information—Procedures—Immunity when acting in good faith.

(1) Prescription information submitted to the department shall be confidential, in compliance with chapter 70.02 RCW and federal health care information privacy requirements and not subject to disclosure, except as provided in subsections (3) and (4) of this section.

(2) The department shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed to persons except as in subsections (3) and (4) of this section.

(3) The department may provide data in the prescription monitoring program to the following persons:

(a) Persons authorized to prescribe or dispense controlled substances, for the purpose of providing medical or pharmaceutical care for their patients;

(b) An individual who requests the individual's own prescription monitoring information;

(c) Health professional licensing, certification, or regulatory agency or entity;

(d) Appropriate local, state, and federal law enforcement or prosecutorial officials who are engaged in a bona fide specific investigation involving a designated person;

(e) Authorized practitioners of the department of social and health services and the health care authority regarding medicaid program recipients;

(f) The director or director's designee within the department of labor and industries regarding workers' compensation claimants;

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(g) The director or the director's designee within the department of corrections regarding offenders committed to the department of corrections;

(h) Other entities under grand jury subpoena or court order; and

(i) Personnel of the department for purposes of administration and enforcement of this chapter or chapter 69.50 RCW.

(4) The department may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients, dispensers, prescribers, and persons who received prescriptions from dispensers.

(5) A dispenser or practitioner acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting, receiving, or using information from the program. [2011 1st sp.s. c 15 § 87; 2007 c 259 § 45.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Chapter 70.230 RCW

AMBULATORY SURGICAL FACILITIES

Sections

70.230.010 Definitions. (*Effective January 1, 2012.*)

70.230.040 Exclusions from chapter. (*Effective January 1, 2012.*)

70.230.190 Certain ambulatory surgical facilities deemed to have complied with survey requirements of RCW 70.230.100. (*Effective January 1, 2012.*)

70.230.010 Definitions. (*Effective January 1, 2012.*)

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

(1) "Ambulatory surgical facility" means any distinct entity that operates for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within twenty-four hours and do not require inpatient hospitalization, whether or not the facility is certified under Title XVIII of the federal social security act. An ambulatory surgical facility includes one or more surgical suites that are adjacent to and within the same building as, but not in, the office of a practitioner in an individual or group practice, if the primary purpose of the one or more surgical suites is to provide specialty or multispecialty outpatient surgical services, irrespective of the type of anesthesia administered in the one or more surgical suites. An ambulatory surgical facility that is adjacent to and within the same building as the office of a practitioner in an individual or group practice may include a surgical suite that shares a reception area, restroom, waiting room, or wall with the office of the practitioner in an individual or group practice.

(2) "Department" means the department of health.

(3) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway.

(4) "Person" means an individual, firm, partnership, corporation, company, association, joint stock association, and the legal successor thereof.

(5) "Practitioner" means any physician or surgeon licensed under chapter 18.71 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, or a podiatric physician or surgeon licensed under chapter 18.22 RCW.

(6) "Secretary" means the secretary of health.

(7) "Surgical services" means invasive medical procedures that:

(a) Utilize a knife, laser, cautery, cryogenics, or chemicals; and

(b) Remove, correct, or facilitate the diagnosis or cure of a disease, process, or injury through that branch of medicine that treats diseases, injuries, and deformities by manual or operative methods by a practitioner. [2011 c 76 § 1; 2007 c 273 § 1.]

Effective date—2011 c 76: "This act takes effect January 1, 2012." [2011 c 76 § 4.]

70.230.040 Exclusions from chapter. (*Effective January 1, 2012.*) Nothing in this chapter:

(1) Applies to an ambulatory surgical facility that is maintained and operated by a hospital licensed under chapter 70.41 RCW;

(2) Applies to an office maintained for the practice of dentistry;

(3) Applies to outpatient specialty or multispecialty surgical services routinely and customarily performed in the office of a practitioner in an individual or group practice, where the primary purpose of the office is not as set forth in RCW 70.230.010(1), provided that any surgical services in which general anesthesia is a planned event must be performed only in an ambulatory surgical facility as defined in this chapter or in a hospital or hospital-associated surgical center licensed under chapter 70.41 RCW; or

(4) Limits an ambulatory surgical facility to performing only surgical services. [2011 c 76 § 2; 2007 c 273 § 4.]

Effective date—2011 c 76: See note following RCW 70.230.010.

70.230.190 Certain ambulatory surgical facilities deemed to have complied with survey requirements of RCW 70.230.100. (*Effective January 1, 2012.*) Any entity that meets the definition of an ambulatory surgical facility in RCW 70.230.010 that had been issued a license on or after July 1, 2009, that was later declared void by a department determination that the entity did not meet the definition of an ambulatory surgical facility shall be deemed to have complied with the survey requirements of RCW 70.230.100 for its initial license application. [2011 c 76 § 3.]

Effective date—2011 c 76: See note following RCW 70.230.010.

Chapter 70.250 RCW

ADVANCED DIAGNOSTIC IMAGING WORK GROUP

Sections

70.250.010	Definitions.
70.250.020	Repealed.
70.250.030	Implementation of evidence-based best practice guidelines or protocols.

70.250.050 Robert Bree collaborative—Duties—Membership.

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

(1) "Advanced diagnostic imaging services" means magnetic resonance imaging services, computed tomography services, positron emission tomography services, cardiac nuclear medicine services, and similar new imaging services.

(2) "Authority" means the Washington state health care authority.

(3) "Collaborative" means the Robert Bree collaborative established in RCW 70.250.050.

(4) "Payor" means carriers licensed under chapters 48.21, 48.41, 48.44, 48.46, and 48.62 RCW.

(5) "Self-funded health plan" means an employer-sponsored health plan or Taft-Hartley plan that is not provided through a fully insured health carrier.

(6) "State purchased health care" has the same meaning as in RCW 41.05.011. [2011 c 313 § 2; 2009 c 258 § 1.]

Findings—Intent—2011 c 313: See note following RCW 70.250.050.

70.250.020 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.250.030 Implementation of evidence-based best practice guidelines or protocols. (1) No later than September 1, 2009, all state purchased health care programs shall, except for state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005, implement evidence-based best practice guidelines or protocols applicable to advanced diagnostic imaging services, and the decision support tools to implement the guidelines or protocols, identified under RCW 70.250.050.

(2) By January 1, 2012, and every January 1st thereafter, all state purchased health care programs must implement the evidence-based best practice guidelines or protocols and strategies identified under RCW 70.250.050, after the administrator, in consultation with participating agencies, has affirmatively reviewed and endorsed the recommendations. This requirement applies to health carriers, as defined in RCW 48.43.005 and to entities acting as third-party administrators that contract with state purchased health care programs to provide or administer health benefits for enrollees of those programs. If the collaborative fails to reach consensus within the time frames identified in this section and RCW 70.250.050, state purchased health care programs may pursue implementation of evidence-based strategies on their own initiative. [2011 c 313 § 4; 2009 c 258 § 3.]

Findings—Intent—2011 c 313: See note following RCW 70.250.050.

70.250.050 Robert Bree collaborative—Duties—Membership. (1) Consistent with the authority granted in RCW 41.05.013, the authority shall convene a collaborative, to be known as the Robert Bree collaborative. The collaborative shall identify health care services for which there are substantial variation in practice patterns or high utilization trends in Washington state, without producing better care outcomes for patients, that are indicators of poor quality and potential waste in the health care system. On an annual basis,

the collaborative shall identify up to three health care services it will address.

(2) For each health care service identified, the collaborative shall:

(a) Analyze and identify evidence-based best practice approaches to improve quality and reduce variation in use of the service, including identification of guidelines or protocols applicable to the health care service. In evaluating guidelines, the collaborative should identify the highest quality guidelines based upon the most rigorous and transparent methods for identification, rating, and translation of evidence into practice recommendations.

(b) Identify data collection and reporting necessary to develop baseline health service utilization rates and to measure the impact of strategies adopted under this section. Methods for data collection and reporting should strive to minimize cost and administrative effort related to data collection and reporting wherever possible, including the use of existing data resources and nonfee-based tools for reporting.

(c) Identify strategies to increase use of the evidence-based best practice approaches identified under (a) of this subsection in both state purchased and privately purchased health care plans. Strategies considered should include, but are not limited to: Identifying goals for appropriate utilization rates and reduction in practice variation among providers; peer-to-peer consultation or second opinions; provider feedback reports; use of patient decision aids; incentives for appropriate use of health care services; centers of excellence or other provider qualification standards; quality improvement systems; and service utilization and outcomes reporting, including public reporting. In developing strategies, the collaborative should strongly consider related efforts of organizations such as the Puget Sound health alliance, the Washington state hospital association, the national quality forum, the joint commission on accreditation of health care organizations, the national committee for quality assurance, the foundation for health care quality, and, where appropriate, more focused quality improvement efforts, such as the Washington state perinatal advisory committee and the Washington state surgical care and outcomes assessment program. The collaborative shall provide an opportunity for public comment on the strategies chosen before finalizing their recommendations.

(3) If the collaborative chooses a health care service for which there is substantial variation in practice patterns or a high or low utilization trend in Washington state, and a lack of evidence-based best practice approaches, it should consider strategies that will promote improved care outcomes, such as patient decision aids, provider feedback reports, centers of excellence or other provider qualification standards, and research to improve care quality and outcomes.

(4) The governor shall appoint twenty members of the collaborative, who must include:

(a) Two members, selected from health carriers or third-party administrators that have the most fully insured and self-funded covered lives in Washington state. The count of total covered lives includes enrollment in all companies included in their holding company system. Each health carrier or third-party administrator is entitled to no more than a single position on the collaborative to represent all entities under common ownership or control;

(b) One member, selected from the health maintenance organization having the most fully insured and self-insured covered lives in Washington state. The count of total lives includes enrollment in all companies included in its holding company system. Each health maintenance organization is entitled to no more than a single position on the collaborative to represent all entities under common ownership or control;

(c) One member, chosen from among three nominees submitted by the association of Washington health plans, representing national health carriers that operate in multiple states outside of the Pacific Northwest;

(d) Four physicians, selected from lists of nominees submitted by the Washington state medical association, as follows:

(i) Two physicians, one of whom must be a practicing primary care physician, representing large multispecialty clinics with fifty or more physicians, selected from a list of five nominees. The primary care physician must be either a family physician, an internal medicine physician, or a general pediatrician; and

(ii) Two physicians, one of whom must be a practicing primary care physician, representing clinics with less than fifty physicians, selected from a list of five nominees. The primary care physician must be either a family physician, an internal medicine physician, or a general pediatrician;

(e) One osteopathic physician, selected from a list of five nominees submitted by the Washington state osteopathic medical association;

(f) Two physicians representing the largest hospital-based physician systems in the state, selected from a list of five nominees submitted jointly by the Washington state medical association and the Washington state hospital association;

(g) Three members representing hospital systems, at least one of whom is responsible for quality, submitted from a list of six nominees from the Washington state hospital association;

(h) Three members, representing self-funded purchasers of health care services for employees;

(i) Two members, representing state purchased health care programs; and

(j) One member, representing the Puget Sound health alliance.

(5) The governor shall appoint the chair of the collaborative.

(6) The collaborative shall add members to its membership or establish clinical committees for each therapy under review by the collaborative for the purpose of acquiring clinical expertise needed to accomplish its responsibilities under this section and RCW 70.250.010 and 70.250.030. Membership of clinical committees should reflect clinical expertise in the area of health care services being addressed by the collaborative, including clinicians involved in related quality improvement or comparative effectiveness efforts, as well as nonphysician practitioners. Each clinical committee shall include at least two members of the specialty or subspecialty society most experienced with the health service identified for review.

(7) Permanent and ad hoc members of the collaborative or any of its committees may not have personal financial conflicts of interest that could substantially influence or bias

their participation. If a collaborative or committee member has a personal financial conflict of interest with respect to a particular health care service being addressed by the collaborative, he or she shall disclose such an interest. The collaborative must determine whether the member should be recused from any deliberations or decisions related to that service.

(8) A person serving on the collaborative or any of its clinical committees shall be immune from civil liability, whether direct or derivative, for any decisions made in good faith while pursuing activities associated with the work of collaborative or any of its clinical committees.

(9) The guidelines or protocols identified under this section shall not be construed to establish the standard of care or duty of care owed by health care providers in any cause of action occurring as a result of health care.

(10) The collaborative shall actively solicit federal or private funds and in-kind contributions necessary to complete its work in a timely fashion. The collaborative shall not accept private funds if receipt of such funding could present a potential conflict of interest or bias in the collaborative's deliberations. Available state funds may be used to support the work of the collaborative when the collaborative has selected a health care service that is a high utilization or high-cost service in state purchased health care programs or the health care service is undergoing evaluation in one or more state purchased health care programs and coordination will reduce duplication of efforts. The collaborative shall not begin the work described in this section unless sufficient funds are received from private or federal resources, or available state funds.

(11) No member of the collaborative or its committees may be compensated for his or her service.

(12) The proceedings of the collaborative shall be open to the public and notice of meetings shall be provided at least twenty days prior to a meeting.

(13) The collaborative shall report to the administrator of the authority regarding the health services areas it has chosen and strategies proposed. The administrator shall review the strategies recommended in the report, giving strong consideration to the direction provided in section 1, chapter 313, Laws of 2011 and this section. The administrator's review shall describe the outcomes of the review and any decisions related to adoption of the recommended strategies by state purchased health care programs. Following the administrator's review, the collaborative shall report to the legislature and the governor regarding chosen health services, proposed strategies, the results of the administrator's review, and available information related to the impact of strategies adopted in the previous three years on the cost and quality of care provided in Washington state. The initial report must be submitted by November 15, 2011, with annual reports thereafter. [2011 c 313 § 3.]

Findings—Intent—2011 c 313: "(1) The legislature finds that:

(a) Efforts are needed across the health care system to improve the quality and cost-effectiveness of health care services provided in Washington state and to improve care outcomes for patients.

(b) Some health care services currently provided in Washington state present significant safety, efficacy, or cost-effectiveness concerns. Substantial variation in practice patterns or high utilization trends can be indicators of poor quality and potential waste in the health care system, without producing better care outcomes for patients.

(c) State purchased health care programs should partner with private health carriers, third-party purchasers, and health care providers in shared efforts to improve quality, health outcomes, and cost-effectiveness of care.

(2) The legislature declares that collaboration among state purchased health care programs, private health carriers, third-party purchasers, and health care providers to identify appropriate strategies that will increase the effectiveness of health care delivered in Washington state is in the best interest of the public. The legislature therefore intends to exempt from state antitrust laws, and to provide immunity from federal antitrust laws through the state action doctrine, for activities undertaken pursuant to efforts designed and implemented under this act that might otherwise be constrained by such laws. The legislature does not intend and does not authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of state and federal antitrust laws including, but not limited to, agreements among competing health care providers or health carriers as to the price or specific level of reimbursement for health care services.

(3) The legislature intends that the Robert Bree collaborative established in section 3 of this act provide a mechanism through which public and private health care purchasers, health carriers, and providers can work together to identify effective means to improve quality health outcomes and cost-effectiveness of care. It is not the intent of the legislature to mandate payment or coverage decisions by private health care purchasers or carriers." [2011 c 313 § 1.]

Chapter 70.285 RCW

BRAKE FRICTION MATERIAL

Sections

70.285.020 Definitions.

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

(1) "Accredited laboratory" means a laboratory that is:

(a) Qualified and equipped for testing of products, materials, equipment, and installations in accordance with national or international standards; and

(b) Accredited by a third-party organization approved by the department to accredit laboratories for purposes of this chapter.

(2) "Alternative brake friction material" means brake friction material that:

(a) Does not contain:

(i) More than 0.5 percent copper or its compounds by weight;

(ii) The constituents identified in RCW 70.285.030 at or above the concentrations specified; and

(iii) Other materials determined by the department to be more harmful to human health or the environment than existing brake friction material;

(b) Enables motor vehicle brakes to meet applicable federal safety standards, or if no federal safety standard exists, a widely accepted industry standard;

(c) Is available at a cost and quantity that does not cause significant financial hardship across the majority of brake friction material and vehicle manufacturing industries; and

(d) Is available to enable brake friction material and vehicle manufacturers to produce viable products meeting consumer expectations regarding braking noise, shuddering, and durability.

(3) "Brake friction material" means that part of a motor vehicle brake designed to retard or stop the movement of a motor vehicle through friction against a rotor made of more durable material.

(4) "Committee" means the brake friction material advisory committee.

(5) "Department" means the department of ecology.

(6)(a) "Motor vehicle" has the same meaning as defined in RCW 46.04.320 that are subject to registration requirements under RCW 46.16A.030.

(b) "Motor vehicle" does not include:

(i) Motorcycles as defined in RCW 46.04.330;

(ii) Motor vehicles employing internal closed oil immersed motor vehicle brakes or similar brake systems that are fully contained and emit no debris or fluid under normal operating conditions;

(iii) Military combat vehicles;

(iv) Race cars, dual-sport vehicles, or track day vehicles, whose primary use is for off-road purposes and are permitted under RCW 46.16A.320; or

(v) Collector vehicles, as defined in RCW 46.04.126.

(7)(a) "Motor vehicle brake" means an energy conversion mechanism used to retard or stop the movement of a motor vehicle.

(b) "Motor vehicle brake" does not include brakes designed primarily to hold motor vehicles stationary and not for use while motor vehicles are in motion.

(8) "Original equipment service" means brake friction material provided as service parts originally designed for and using the same brake friction material formulation sold with a new motor vehicle.

(9) "Small volume motor vehicle manufacturer" means a manufacturer of motor vehicles with Washington annual sales of less than one thousand new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles, and heavy-duty engines based on the average number of vehicles sold for the three previous consecutive model years. [2011 c 171 § 111; 2010 c 147 § 2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Chapter 70.295 RCW

STORM WATER POLLUTION—COAL TAR

Sections

70.295.010 Definitions.

70.295.020 Coal tar pavement product—Sale or application prohibited—Notice of corrective action—Authority to adopt ordinance to enforce section.

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

(1) "Coal tar" means a viscous substance obtained by the destructive distillation of coal and containing levels of polycyclic aromatic hydrocarbons in excess of ten thousand milligrams per kilogram. "Coal tar" includes, but is not limited to, refined coal tar, high temperature coal tar, coal tar pitch, or any substance identified by chemical abstract number 65996-93-2.

(2) "Coal tar pavement product" means a material that contains coal tar that is intended for use as a pavement sealant.

(3) "Department" means the department of ecology. [2011 c 268 § 1.]

[2011 RCW Supp—page 1392]

70.295.020 Coal tar pavement product—Sale or application prohibited—Notice of corrective action—Authority to adopt ordinance to enforce section. (1) After January 1, 2012, no person may sell at wholesale or retail a coal tar pavement product that is labeled as containing coal tar.

(2) After July 1, 2013, a person may not apply a coal tar pavement product on a driveway or parking area.

(3) The department may issue a notice of corrective action to a person in violation of subsection (1) or (2) of this section.

(4) A city or county may adopt an ordinance providing for enforcement of the requirements of subsection (1) or (2) of this section. A city or county adopting an ordinance has jurisdiction concurrent with the department to enforce this section. [2011 c 268 § 2.]

Chapter 70.300 RCW

RECREATIONAL WATER VESSELS—ANTIFOULING PAINTS

Sections

70.300.005 Intent.

70.300.010 Definitions.

70.300.020 Antifouling paint containing copper.

70.300.030 Recreational water vessel hull cleaning—Best practices.

70.300.040 Civil penalty.

70.300.050 Statewide advisory committee—Survey—Report to the legislature.

70.300.060 Rule-making authority.

70.300.005 Intent. The legislature intends to phase out the use of copper-based antifouling paints used on recreational water vessels. [2011 c 248 § 1.]

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

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology.

(3)(a) "Recreational water vessel" means any vessel that is no more than sixty-five feet in length and is: (i) Manufactured or used primarily for pleasure; or (ii) leased, rented, or chartered by a person for the pleasure of that person.

(b) "Recreational water vessel" does not include a vessel that is subject to United States coast guard inspection and that: (i) Is engaged in commercial use; or (ii) carries paying passengers. [2011 c 248 § 2.]

70.300.020 Antifouling paint containing copper. (1) Beginning January 1, 2018, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale in this state any new recreational water vessel manufactured on or after January 1, 2018, with antifouling paint containing copper.

(2) Beginning January 1, 2020, no antifouling paint that is intended for use on a recreational water vessel and that contains more than 0.5 percent copper may be offered for sale in this state.

(3) Beginning January 1, 2020, no antifouling paint containing more than 0.5 percent copper may be applied to a recreational water vessel in this state. [2011 c 248 § 3.]

70.300.030 Recreational water vessel hull cleaning—Best practices. The department, in consultation and cooperation with other state natural resources agencies, must increase educational efforts regarding recreational water vessel hull cleaning to reduce the spread of invasive species. This effort must include a review of best practices that consider the type of antifouling paint used and recommendations regarding appropriate hull cleaning that includes in-water methods. [2011 c 248 § 4.]

70.300.040 Civil penalty. (1) The department shall enforce the requirements of this chapter.

(2)(a) A person or entity that violates this chapter is subject to a civil penalty. The department may assess and collect a civil penalty of up to ten thousand dollars per day per violation.

(b) All penalties collected by the department under this chapter must be deposited in the state toxics control account created in RCW 70.105D.070. [2011 c 248 § 5.]

70.300.050 Statewide advisory committee—Survey—Report to the legislature. (1) On or after January 1, 2016, the director may establish and maintain a statewide advisory committee to assist the department in implementing the requirements of this chapter.

(2)(a) By January 1, 2017, the department shall survey the manufacturers of antifouling paints sold or offered for sale in this state to determine the types of antifouling paints that are available in this state. The department shall also study how antifouling paints affect marine organisms and water quality. The department shall report its findings to the legislature, consistent with RCW 43.01.036, by December 31, 2017.

(b) If the statewide advisory committee authorized under subsection (1) of this section is established by the director, the department may consult with the statewide advisory committee to prepare the report required under (a) of this subsection. [2011 c 248 § 6.]

70.300.060 Rule-making authority. The department may adopt rules as necessary to implement this chapter. [2011 c 248 § 7.]

Chapter 70.305 RCW

ADVERSE CHILDHOOD EXPERIENCES

Sections

70.305.005	Finding—Purpose.
70.305.010	Definitions.
70.305.020	Preventing and mitigating the effects of adverse childhood experiences—Planning group—Report to the legislature—Secretary's authority.

70.305.005 Finding—Purpose. The legislature finds that adverse childhood experiences are a powerful common determinant of a child's ability to be successful at school and, as an adult, to be successful at work, to avoid behavioral and chronic physical health conditions, and to build healthy relationships. The purpose of this chapter is to identify the primary causes of adverse childhood experiences in communities and to mobilize broad public and private support to pre-

vent harm to young children and reduce the accumulated harm of adverse experiences throughout childhood. A focused effort is needed to: (1) Identify and promote the use of innovative strategies based on evidence-based and research-based approaches and practices; and (2) align public and private policies and funding with approaches and strategies which have demonstrated effectiveness.

The legislature recognizes that many community public health and safety networks across the state have knowledge and expertise regarding the reduction of adverse childhood experiences and can provide leadership on this initiative in their communities. In addition, a broad range of community coalitions involved with early learning, child abuse prevention, and community mobilization have coalesced in many communities. The adverse childhood experiences initiative should coordinate and assemble the strongest components of these networks and coalitions to effectively respond to the challenge of reducing and preventing adverse childhood experiences while providing flexibility for communities to design responses that are appropriate for their community. [2011 1st sp.s. c 32 § 1.]

Transition plan—Report to the legislature—2011 1st sp.s. c 32: "(1) Beginning July 1, 2011, the council for children and families and the department of early learning shall develop a plan for transitioning the work of the council for children and families, including public awareness campaigns, to the department of early learning. The council for children and families and the department of early learning shall participate in the development of the private-public initiative in order to streamline efforts around the prevention of child abuse and neglect and avoid duplication of effort.

(2) The executive director of the council for children and families and the director of the department of early learning shall consult with the planning group convened in section 3 of this act to develop strategies to maximize Washington's leverage and match of federal child abuse and neglect prevention moneys.

(3) No later than January 1, 2012, the council for children and families and the department of early learning shall report to the appropriate committees of the legislature on its transition plan." [2011 1st sp.s. c 32 § 9.]

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

(1) "Adverse childhood experiences" means the following indicators of severe childhood stressors and family dysfunction that, when experienced in the first eighteen years of life and taken together, are proven by public health research to be powerful determinants of physical, mental, social, and behavioral health across the lifespan: Child physical abuse; child sexual abuse; child emotional abuse; child emotional or physical neglect; alcohol or other substance abuse in the home; mental illness, depression, or suicidal behaviors in the home; incarceration of a family member; witnessing intimate partner violence; and parental divorce or separation. Adverse childhood experiences have been demonstrated to affect the development of the brain and other major body systems.

(2) "Community public health and safety networks" or "networks" means the organizations authorized under RCW 70.190.060.

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

(4) "Director" means the director of the department of early learning.

(5) "Evidence-based" has the same meaning as in RCW 43.215.146.

(6) "Research-based" has the same meaning as in RCW 43.215.146.

(7) "Secretary" means the secretary of social and health services. [2011 1st sp.s. c 32 § 2.]

Transition plan—Report to the legislature—2011 1st sp.s. c 32: See note following RCW 70.305.005.

70.305.020 Preventing and mitigating the effects of adverse childhood experiences—Planning group—Report to the legislature—Secretary's authority. (1)(a) The secretary of the department of social and health services and the director of the department of early learning shall actively participate in the development of a nongovernmental private-public initiative focused on coordinating government and philanthropic organizations' investments in the positive development of children and preventing and mitigating the effects of adverse childhood experiences. The secretary and director shall convene a planning group to work with interested private partners to: (i) Develop a process by which the goals identified in RCW 70.305.005 shall be met; and (ii) develop recommendations for inclusive and diverse governance to advance the adverse childhood experiences initiative.

(b) The secretary and director shall select no more than twelve to fifteen persons as members of the planning group. The members selected must represent a diversity of interests including: Early learning coalitions, community public health and safety networks, organizations that work to prevent and address child abuse and neglect, tribes, representatives of public agency agencies involved with interventions in or prevention of adverse childhood experiences, philanthropic organizations, and organizations focused on community mobilization.

(c) The secretary and director shall cochair the planning group meetings and shall convene the first meeting.

(2) The planning group shall submit a report on its progress and recommendations to the appropriate legislative committees no later than December 15, 2011.

(3) In addition to other powers granted to the secretary, the secretary may:

(a) Enter into contracts on behalf of the department to carry out the purposes of this chapter;

(b) Provide funding to communities or any governance entity that is created as a result of the partnership; and

(c) Accept gifts, grants, or other funds for the purposes of this chapter. [2011 1st sp.s. c 32 § 3.]

Transition plan—Report to the legislature—2011 1st sp.s. c 32: See note following RCW 70.305.005.

Title 71

MENTAL ILLNESS

Chapters

71.05 Mental illness.

71.09 Sexually violent predators.

71.12 Private establishments.

71.24 Community mental health services act.

71.32 Mental health advance directives.

71.34 Mental health services for minors.

Chapter 71.05 RCW

MENTAL ILLNESS

Sections

71.05.020 Definitions. (*Effective until January 1, 2012.*)

71.05.020 Definitions. (*Effective January 1, 2012.*)

71.05.110 Compensation of appointed counsel. (*Effective July 1, 2012.*)

71.05.150 Detention of persons with mental disorders for evaluation and treatment—Procedure.

71.05.153 Emergent detention of persons with mental disorders—Procedure.

71.05.190 Persons not admitted—Transportation—Detention of arrested person pending return to custody.

71.05.230 Procedures for additional treatment. (*Effective July 1, 2012.*)

71.05.385 Information subject to disclosure to authorized persons—Restrictions.

71.05.390 Confidential information and records—Disclosure.

71.05.425 Persons committed following dismissal of sex, violent, or felony harassment offense—Notification of conditional release, final release, leave, transfer, or escape—To whom given—Definitions.

71.05.730 Judicial services—Civil commitment cases—Reimbursement. (*Effective July 1, 2012.*)

71.05.732 Reimbursement for judicial services—Assessment.

71.05.020 Definitions. (*Effective until January 1, 2012.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission" or "admit" means a decision by a physician or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(3) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(4) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(5) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(6) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

(7) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

(8) "Department" means the department of social and health services;

(9) "Designated chemical dependency specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in chapters 70.96A and 70.96B RCW;

(10) "Designated crisis responder" means a mental health professional appointed by the county or the regional support network to perform the duties specified in this chapter;

(11) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter;

(12) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

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

(14) "Developmental disability" means that condition defined in RCW 71A.10.020(3);

(15) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(16) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(17) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

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

(19) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility or in confinement as a result of a criminal conviction;

(20) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(21) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other pro-

fessionals as a team, for a person with developmental disabilities, which shall state:

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

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

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

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

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

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

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

(22) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information;

(23) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(24) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public mental health service providers under RCW 71.05.130;

(25) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts;

(26) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;

(27) "Mental health professional" means a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(28) "Mental health service provider" means a public or private agency that provides mental health services to persons with mental disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or community mental health programs as defined in RCW

71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, and correctional facilities operated by state and local governments;

(29) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(30) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;

(31) "Professional person" means a mental health professional and shall also mean a physician, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(32) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

(33) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(34) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(35) "Public agency" means any evaluation and treatment facility or institution, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(36) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness;

(37) "Release" means legal termination of the commitment under the provisions of this chapter;

(38) "Resource management services" has the meaning given in chapter 71.24 RCW;

(39) "Secretary" means the secretary of the department of social and health services, or his or her designee;

(40) "Serious violent offense" has the same meaning as provided in RCW 9.94A.030;

(41) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary;

(42) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a

court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(43) "Triage facility" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department of health residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(44) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others;

(45) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2011 c 148 § 1. Prior: 2009 c 320 § 1; 2009 c 217 § 20; 2008 c 156 § 1; prior: 2007 c 375 § 6; 2007 c 191 § 2; 2005 c 504 § 104; 2000 c 94 § 1; 1999 c 13 § 5; 1998 c 297 § 3; 1997 c 112 § 3; prior: 1989 c 420 § 13; 1989 c 205 § 8; 1989 c 120 § 2; 1979 ex.s. c 215 § 5; 1973 1st ex.s. c 142 § 7.]

Certification of triage facilities—2011 c 148: "Facilities operating as triage facilities as defined in RCW 71.05.020, whether or not they are certified by the department of social and health services, as of April 22, 2011, are not required to relicense or recertify under any new rules governing licensure or certification of triage facilities. The department of social and health services shall work with the Washington association of counties and the Washington association of sheriffs and police chiefs in creating rules that establish standards for certification of triage facilities. The department of health rules must not require triage facilities to provide twenty-four hour nursing." [2011 c 148 § 6.]

Effective date—2011 c 148: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 22, 2011]." [2011 c 148 § 7.]

Conflict with federal requirements—2009 c 320: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2009 c 320 § 6.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Alphabetization—Correction of references—2005 c 504: "(1) The code reviser shall alphabetize and renumber the definitions, and correct any internal references affected by this act.

(2) The code reviser shall replace all references to "county designated mental health professional" with "designated mental health professional" in the Revised Code of Washington." [2005 c 504 § 811.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

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

71.05.020 Definitions. (Effective January 1, 2012.)

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

(1) "Admission" or "admit" means a decision by a physician or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(3) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(4) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(5) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(6) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

(7) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

(8) "Department" means the department of social and health services;

(9) "Designated chemical dependency specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in chapters 70.96A and 70.96B RCW;

(10) "Designated crisis responder" means a mental health professional appointed by the county or the regional support network to perform the duties specified in this chapter;

(11) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter;

(12) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(13) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social

worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

(14) "Developmental disability" means that condition defined in *RCW 71A.10.020(3);

(15) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(16) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(17) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

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

(19) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility or in confinement as a result of a criminal conviction;

(20) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

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

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

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

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

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

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

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed

eventual discharge or release, and a projected possible date for discharge or release; and

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

(22) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information;

(23) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(24) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public mental health service providers under RCW 71.05.130;

(25) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts;

(26) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;

(27) "Mental health professional" means a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(28) "Mental health service provider" means a public or private agency that provides mental health services to persons with mental disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or community mental health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, and correctional facilities operated by state and local governments;

(29) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(30) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;

(31) "Professional person" means a mental health professional and shall also mean a physician, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(32) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

(33) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(34) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(35) "Public agency" means any evaluation and treatment facility or institution, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(36) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness;

(37) "Release" means legal termination of the commitment under the provisions of this chapter;

(38) "Resource management services" has the meaning given in chapter 71.24 RCW;

(39) "Secretary" means the secretary of the department of social and health services, or his or her designee;

(40) "Serious violent offense" has the same meaning as provided in RCW 9.94A.030;

(41) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(42) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(43) "Triage facility" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department of health residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(44) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are

maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others;

(45) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2011 c 148 § 1; 2011 c 89 § 14. Prior: 2009 c 320 § 1; 2009 c 217 § 20; 2008 c 156 § 1; prior: 2007 c 375 § 6; 2007 c 191 § 2; 2005 c 504 § 104; 2000 c 94 § 1; 1999 c 13 § 5; 1998 c 297 § 3; 1997 c 112 § 3; prior: 1989 c 420 § 13; 1989 c 205 § 8; 1989 c 120 § 2; 1979 ex.s. c 215 § 5; 1973 1st ex.s. c 142 § 7.]

Reviser's note: *(1) RCW 71A.10.020 was amended by 2011 1st sp.s. c 30 § 3, changing subsection (3) to subsection (4).

(2) This section was amended by 2011 c 89 § 14 and by 2011 c 148 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Certification of triage facilities—2011 c 148: "Facilities operating as triage facilities as defined in RCW 71.05.020, whether or not they are certified by the department of social and health services, as of April 22, 2011, are not required to relicense or recertify under any new rules governing licensure or certification of triage facilities. The department of social and health services shall work with the Washington association of counties and the Washington association of sheriffs and police chiefs in creating rules that establish standards for certification of triage facilities. The department of health rules must not require triage facilities to provide twenty-four hour nursing." [2011 c 148 § 6.]

Effective date—2011 c 148: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 22, 2011]." [2011 c 148 § 7.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Conflict with federal requirements—2009 c 320: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2009 c 320 § 6.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Alphabetization—Correction of references—2005 c 504: "(1) The code reviser shall alphabetize and renumber the definitions, and correct any internal references affected by this act.

(2) The code reviser shall replace all references to "county designated mental health professional" with "designated mental health professional" in the Revised Code of Washington." [2005 c 504 § 811.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

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

71.05.110 Compensation of appointed counsel.
(Effective July 1, 2012.) Attorneys appointed for persons

pursuant to this chapter shall be compensated for their services as follows: (1) The person for whom an attorney is appointed shall, if he or she is financially able pursuant to standards as to financial capability and indigency set by the superior court of the county in which the proceeding is held, bear the costs of such legal services; (2) if such person is indigent pursuant to such standards, the regional support network shall reimburse the county in which the proceeding is held for the direct costs of such legal services, as provided in RCW 71.05.730. [2011 c 343 § 5; 1997 c 112 § 7; 1973 1st ex.s. c 142 § 16.]

Intent—Effective date—2011 c 343: See notes following RCW 71.05.730.

71.05.150 Detention of persons with mental disorders for evaluation and treatment—Procedure. (1) When a designated mental health professional receives information alleging that a person, as a result of a mental disorder: (i) Presents a likelihood of serious harm; or (ii) is gravely disabled; the designated mental health professional may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention. Before filing the petition, the designated mental health professional must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility, crisis stabilization unit, or triage facility.

(2)(a) An order to detain to a designated evaluation and treatment facility for not more than a seventy-two-hour evaluation and treatment period may be issued by a judge of the superior court upon request of a designated mental health professional, whenever it appears to the satisfaction of a judge of the superior court:

(i) That there is probable cause to support the petition; and

(ii) That the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention, signed under penalty of perjury, or sworn telephonic testimony may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(3) The designated mental health professional shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order together with a notice of rights, and a petition for initial detention. After service on such person the designated mental health professional shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility and the designated attorney. The designated mental health professional shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility.

ity. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated mental health professional may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of rights and a petition for initial detention. [2011 c 148 § 5; 2007 c 375 § 7; 1998 c 297 § 8; 1997 c 112 § 8; 1984 c 233 § 1; 1979 ex.s. c 215 § 9; 1975 1st ex.s. c 199 § 3; 1974 ex.s. c 145 § 8; 1973 1st ex.s. c 142 § 20.]

Certification of triage facilities—Effective date—2011 c 148: See notes following RCW 71.05.020.

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Captions not law—2007 c 375: See note following RCW 10.77.084.

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

71.05.153 Emergent detention of persons with mental disorders—Procedure. (1) When a designated mental health professional receives information alleging that a person, as the result of a mental disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated mental health professional may take such person, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in RCW 71.05.180.

(2) A peace officer may take or cause such person to be taken into custody and immediately delivered to a triage facility, crisis stabilization unit, evaluation and treatment facility, or the emergency department of a local hospital under the following circumstances:

(a) Pursuant to subsection (1) of this section; or

(b) When he or she has reasonable cause to believe that such person is suffering from a mental disorder and presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled.

(3) Persons delivered to a crisis stabilization unit, evaluation and treatment facility, emergency department of a local hospital, or triage facility that has elected to operate as an involuntary facility by peace officers pursuant to subsection (2) of this section may be held by the facility for a period of up to twelve hours.

(4) Within three hours of arrival, the person must be examined by a mental health professional. Within twelve hours of arrival, the designated mental health professional

must determine whether the individual meets detention criteria. If the individual is detained, the designated mental health professional shall file a petition for detention or a supplemental petition as appropriate and commence service on the designated attorney for the detained person. If the individual is released to the community, the mental health provider shall inform the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and provided contact information to the provider. [2011 c 305 § 8; 2011 c 148 § 2; 2007 c 375 § 8.]

Reviser's note: This section was amended by 2011 c 148 § 2 and by 2011 c 305 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—2011 c 305: See note following RCW 74.09.295.

Certification of triage facilities—Effective date—2011 c 148: See notes following RCW 71.05.020.

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Captions not law—2007 c 375: See note following RCW 10.77.084.

71.05.190 Persons not admitted—Transportation—Detention of arrested person pending return to custody. If the person is not approved for admission by a facility providing seventy-two hour evaluation and treatment, and the individual has not been arrested, the facility shall furnish transportation, if not otherwise available, for the person to his or her place of residence or other appropriate place. If the individual has been arrested, the evaluation and treatment facility shall detain the individual for not more than eight hours at the request of the peace officer. The facility shall make reasonable attempts to contact the requesting peace officer during this time to inform the peace officer that the person is not approved for admission in order to enable a peace officer to return to the facility and take the individual back into custody. [2011 c 305 § 3; 1997 c 112 § 13; 1979 ex.s. c 215 § 12; 1974 ex.s. c 145 § 12; 1973 1st ex.s. c 142 § 24.]

Findings—2011 c 305: See note following RCW 74.09.295.

71.05.230 Procedures for additional treatment. (Effective July 1, 2012.) A person detained for seventy-two hour evaluation and treatment may be detained for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative to involuntary intensive treatment. A petition may only be filed if the following conditions are met:

(1) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and finds that the condition is caused by mental disorder and either results in a likelihood of serious harm, or results in the detained person being gravely disabled and are prepared to testify those conditions are met; and

(2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he or she has not in good faith volunteered; and

(3) The facility providing intensive treatment is certified to provide such treatment by the department; and

(4) The professional staff of the agency or facility or the designated mental health professional has filed a petition for

fourteen day involuntary detention or a ninety day less restrictive alternative with the court. The petition must be signed either by:

- (a) Two physicians;
- (b) One physician and a mental health professional;
- (c) Two psychiatric advanced registered nurse practitioners;
- (d) One psychiatric advanced registered nurse practitioner and a mental health professional; or
- (e) A physician and a psychiatric advanced registered nurse practitioner. The persons signing the petition must have examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and shall set forth the less restrictive alternative proposed by the facility; and

(5) A copy of the petition has been served on the detained person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and

(6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and

(7) The petition reflects that the person was informed of the loss of firearm rights if involuntarily committed; and

(8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the designated mental health professional may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and

(9) If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated has agreed to assume such responsibility. [2011 c 343 § 9. Prior: 2009 c 293 § 3; 2009 c 217 § 2; 2006 c 333 § 302; 1998 c 297 § 13; 1997 c 112 § 18; 1987 c 439 § 3; 1975 1st ex.s. c 199 § 5; 1974 ex.s. c 145 § 15; 1973 1st ex.s. c 142 § 28.]

Intent—Effective date—2011 c 343: See notes following RCW 71.05.730.

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

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

71.05.385 Information subject to disclosure to authorized persons—Restrictions. (1) A mental health service provider shall release to the persons authorized under subsection (2) of this section, upon request:

(a) The fact, place, and date of an involuntary commitment, the fact and date of discharge or release, and the last known address of a person who has been committed under this chapter.

(b) Information related to mental health services, in the format determined under subsection (9) of this section, concerning a person who:

(i) Is currently committed to the custody or supervision of the department of corrections or the indeterminate sentence review board under chapter 9.94A or 9.95 RCW;

(ii) Has been convicted or found not guilty by reason of insanity of a serious violent offense; or

(iii) Was charged with a serious violent offense and such charges were dismissed under RCW 10.77.086.

Legal counsel may release such information to the persons authorized under subsection (2) of this section on behalf of the mental health service provider, provided that nothing in this subsection shall require the disclosure of attorney work product or attorney-client privileged information.

(2) The information subject to release under subsection (1) of this section shall be released to law enforcement officers, personnel of a county or city jail, designated mental health professionals, public health officers, therapeutic court personnel, or personnel of the department of corrections, including the indeterminate sentence review board and personnel assigned to perform board-related duties, when such information is requested during the course of business and for the purpose of carrying out the responsibilities of the requesting person's office. No mental health service provider or person employed by a mental health service provider, or its legal counsel, shall be liable for information released to or used under the provisions of this section or rules adopted under this section except under RCW 71.05.440.

(3) A person who requests information under subsection (1)(b) of this section must comply with the following restrictions:

(a) Information must be requested only for the purposes permitted by this subsection and for the purpose of carrying out the responsibilities of the requesting person's office. Appropriate purposes for requesting information under this section include:

(i) Completing presentence investigations or risk assessment reports;

(ii) Assessing a person's risk to the community;

(iii) Assessing a person's risk of harm to self or others when confined in a city or county jail;

(iv) Planning for and provision of supervision of an offender, including decisions related to sanctions for violations of conditions of community supervision; and

(v) Responding to an offender's failure to report for department of corrections supervision.

(b) Information shall not be requested under this section unless the requesting person has reasonable suspicion that the individual who is the subject of the information:

(i) Has engaged in activity indicating that a crime or a violation of community custody or parole has been committed or, based upon his or her current or recent past behavior, is likely to be committed in the near future; or

(ii) Is exhibiting signs of a deterioration in mental functioning which may make the individual appropriate for civil commitment under this chapter.

(c) Any information received under this section shall be held confidential and subject to the limitations on disclosure outlined in this chapter, except:

(i) Such information may be shared with other persons who have the right to request similar information under subsection (2) of this section, solely for the purpose of coordinating activities related to the individual who is the subject of the information in a manner consistent with the official responsibilities of the persons involved;

(ii) Such information may be shared with a prosecuting attorney acting in an advisory capacity for a person who receives information under this section. A prosecuting attorney under this subsection shall be subject to the same restrictions and confidentiality limitations as the person who requested the information; and

(iii) As provided in RCW 72.09.585.

(4) A request for information related to mental health services under this section shall not require the consent of the subject of the records. Such request shall be provided in writing, except to the extent authorized in subsection (5) of this section. A written request may include requests made by e-mail or facsimile so long as the requesting person is clearly identified. The request must specify the information being requested.

(5) In the event of an emergency situation that poses a significant risk to the public or the offender, a mental health service provider, or its legal counsel, shall release information related to mental health services delivered to the offender and, if known, information regarding where the offender is likely to be found to the department of corrections or law enforcement upon request. The initial request may be written or oral. All oral requests must be subsequently confirmed in writing. Information released in response to an oral request is limited to a statement as to whether the offender is or is not being treated by the mental health service provider and the address or information about the location or whereabouts of the offender.

(6) Disclosure under this section to state or local law enforcement authorities is mandatory for the purposes of the health insurance portability and accountability act.

(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(8) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(9) In collaboration with interested organizations, the department shall develop a standard form for requests for information related to mental health services made under this section and a standard format for information provided in response to such requests. Consistent with the goals of the health information privacy provisions of the federal health insurance portability and accountability act, in developing the standard form for responsive information, the department shall design the form in such a way that the information disclosed is limited to the minimum necessary to serve the purpose for which the information is requested. [2011 1st sp.s. c 40 § 23; 2009 c 320 § 2.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Conflict with federal requirements—2009 c 320: See note following RCW 71.05.020.

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71.05.390 Confidential information and records—Disclosure. Except as provided in this section, RCW 71.05.445, 71.05.630, 70.96A.150, 71.05.385, 74.09.295, or pursuant to a valid release under RCW 70.02.030, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the person, or his or her personal representative or guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person:

- (a) Employed by the facility;
- (b) Who has medical responsibility for the patient's care;
- (c) Who is a designated mental health professional;
- (d) Who is providing services under chapter 71.24 RCW;
- (e) Who is employed by a state or local correctional facility where the person is confined or supervised; or
- (f) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside.

(3)(a) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(b) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(i) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(ii) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Such other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5)(a) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in

the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ "

(b) Nothing in this chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary.

(6)(a) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(b) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(c) Disclosure under this subsection is mandatory for the purpose of the health insurance portability and accountability act.

(7)(a) When a mental health professional is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. Such written report shall be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(b) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10)(a) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or

private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(b) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(11)(a) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence.

(b) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(12) To the persons designated in RCW 71.05.425 and 71.05.385 for the purposes described in those sections.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(3)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(14) Upon the death of a person, his or her next of kin, personal representative, guardian, or conservator, if any, shall be notified.

Next of kin who are of legal age and competent shall be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient shall be governed by RCW 70.02.140.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.56 RCW.

(16) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient.

(17) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is

waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(18) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee.

Except as otherwise provided in this chapter, the uniform health care information act, chapter 70.02 RCW, applies to all records and information compiled, obtained, or maintained in the course of providing services.

(19) The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except as provided in RCW 71.05.385, in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(3)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained. [2011 c 305 § 4. Prior: 2009 c 320 § 3; 2009 c 217 § 6; 2007 c 375 § 15; prior: 2005 c 504 § 109; 2005 c 453 § 5; 2005 c 274 § 346; prior: 2004 c 166 § 6; 2004 c 157 § 5; 2004 c 33 § 2; prior: 2000 c 94 § 9; 2000 c 75 § 6; 2000 c 74 § 7; 1999 c 12 § 1; 1998 c 297 § 22; 1993 c 448 § 6; 1990 c 3 § 112; 1986 c 67 § 8; 1985 c 207 § 1; 1983 c 196 § 4; 1979 ex.s. c 215 § 17; 1975 1st ex.s. c 199 § 10; 1974 ex.s. c 145 § 27; 1973 1st ex.s. c 142 § 44.]

Findings—2011 c 305: See note following RCW 74.09.295.

Conflict with federal requirements—2009 c 320: See note following RCW 71.05.020.

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Severability—2005 c 453: See note following RCW 9.41.040.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

[2011 RCW Supp—page 1404]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

Findings—Intent—Severability—Effective date—2004 c 157: See notes following RCW 10.77.010.

Finding—Intent—2004 c 33: "The legislature finds that social stigmas surrounding mental illness have prevented patients buried in the state hospital cemeteries from being properly memorialized. From 1887 to 1953, the state buried many of the patients who died while in residence at the three state hospitals on hospital grounds. In order to honor these patients, the legislature intends that the state be allowed to release records necessary to appropriately mark their resting place." [2004 c 33 § 1.]

Intent—2000 c 75: See note following RCW 71.05.445.

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

Additional notes found at www.leg.wa.gov

71.05.425 Persons committed following dismissal of sex, violent, or felony harassment offense—Notification of conditional release, final release, leave, transfer, or escape—To whom given—Definitions. (1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final release, authorized leave under RCW 71.05.325(2), or transfer to a facility other than a state mental hospital, the superintendent shall send written notice of conditional release, release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) to the following:

(i) The chief of police of the city, if any, in which the person will reside; and

(ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4):

(i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3)(c) or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings;

(iii) Any person specified in writing by the prosecuting attorney. Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter; and

(iv) The chief of police of the city, if any, and the sheriff of the county, if any, which had jurisdiction of the person on the date of the applicable offense.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical transfers.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person escaped and in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW 71.05.390(18). If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, state registered domestic partner, parents, siblings, and children;

(d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony. [2011 c 305 § 5; 2009 c 521 § 158; 2008 c 213 § 10; 2005 c 504 § 710; 2000 c 94 § 10; 1999 c 13 § 8; 1994 c 129 § 9; 1992 c 186 § 9; 1990 c 3 § 109.]

Findings—2011 c 305: See note following RCW 74.09.295.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

Findings—Intent—1994 c 129: See note following RCW 4.24.550.

Additional notes found at www.leg.wa.gov

71.05.730 Judicial services—Civil commitment cases—Reimbursement. (Effective July 1, 2012.) (1) A county may apply to its regional support network on a quarterly basis for reimbursement of its direct costs in providing judicial services for civil commitment cases under this chapter and chapter 71.34 RCW. The regional support network shall in turn be entitled to reimbursement from the regional support network that serves the county of residence of the individual who is the subject of the civil commitment case. Reimbursements under this section shall be paid out of the regional support network's nonmedicaid appropriation.

(2) Reimbursement for judicial services shall be provided per civil commitment case at a rate to be determined based on an independent assessment of the county's actual direct costs. This assessment must be based on an average of the expenditures for judicial services within the county over the past three years. In the event that a baseline cannot be established because there is no significant history of similar cases within the county, the reimbursement rate shall be equal to eighty percent of the median reimbursement rate of counties included in the independent assessment.

(3) For the purposes of this section:

(a) "Civil commitment case" includes all judicial hearings related to a single episode of hospitalization, or less restrictive alternative detention in lieu of hospitalization, except that the filing of a petition for a one hundred eighty-day commitment under this chapter or a petition for a successive one hundred eighty-day commitment under chapter 71.34 RCW shall be considered to be a new case regardless of whether there has been a break in detention. "Civil commitment case" does not include the filing of a petition for a one hundred eighty-day commitment under this chapter on behalf of a patient at a state psychiatric hospital.

(b) "Judicial services" means a county's reasonable direct costs in providing prosecutor services, assigned counsel and defense services, court services, and court clerk services for civil commitment cases under this chapter and chapter 71.34 RCW.

(4) To the extent that resources have shared purpose, the regional support network may only reimburse counties to the extent such resources are necessary for and devoted to judicial services as described in this section.

(5) No filing fee may be charged or collected for any civil commitment case subject to reimbursement under this section. [2011 c 343 § 2.]

Intent—2011 c 343: "The legislature recognizes that counties that host evaluation and treatment beds incur costs by providing judicial services associated with civil commitments under chapters 71.05 and 71.34 RCW. Because evaluation and treatment beds are not evenly distributed across the state, these commitments frequently occur in a different county from the county in which the person was originally detained. The intent of this act is to create a process for the state to reimburse counties through the regional support networks for the counties' reasonable direct costs incurred in providing these judicial services, and to prevent the burden of these costs from falling disproportionately on the counties or regional support networks in which the commitments are most likely to occur. The legislature recognizes that the costs of judicial services may vary across the state based on different factors and conditions." [2011 c 343 § 1.]

Effective date—2011 c 343: "Except for section 3 of this act, this act takes effect July 1, 2012." [2011 c 343 § 10.]

71.05.732 Reimbursement for judicial services—Assessment. (1) The joint legislative audit and review committee shall conduct an independent assessment of the direct costs of providing judicial services under this chapter and chapter 71.34 RCW as defined in RCW 71.05.730. The assessment shall include a review and analysis of the reasons for differences in costs among counties. The assessment shall be conducted for any county in which more than twenty civil commitment cases were conducted during the year prior to the study. The assessment must be completed by June 1, 2012.

(2) The administrative office of the courts and the department shall provide the joint legislative audit and

review committee with assistance and data required to complete the assessment.

(3) The joint legislative audit and review committee shall present recommendations as to methods for updating the costs identified in the assessment to reflect changes over time. [2011 c 343 § 3.]

Intent—2011 c 343: See note following RCW 71.05.730.

Chapter 71.09 RCW

SEXUALLY VIOLENT PREDATORS

Sections

71.09.300 Transition facilities—Staffing.

71.09.300 Transition facilities—Staffing. Secure community transition facilities shall meet the following minimum staffing requirements:

(1) At any time the census of a facility is six or fewer residents, all staff shall be classified as residential rehabilitation counselor II or have a classification that indicates an equivalent or higher level of skill, experience, and training.

(2)(a) For the secure transition facility located on McNeil Island, the direct care staffing level shall be at least three qualified, trained staff as described in subsection (3) of this section, unless there are no residents housed at the facility, in which case the facility need not staff to this ratio.

(b) For the secure community transition facility located in Seattle, the direct care staffing level shall be at least two qualified, trained staff as described in subsection (3) of this section, unless there are no residents housed at the facility, in which case the facility need not staff to this ratio.

(3) Before being assigned to a facility, all staff must have received training in sex offender issues, self-defense, and crisis de-escalation skills in addition to departmental orientation and, as appropriate, management training. All staff with resident treatment or care duties must participate in ongoing in-service training.

(4) All staff must pass a departmental background check and the check is not subject to the limitations in chapter 9.96A RCW. A person who has been convicted of a felony, or any sex offense, may not be employed at the secure community transition facility or be approved as an escort for a resident of the facility. [2011 c 19 § 1; 2003 c 216 § 1; 2001 2nd sp.s. c 12 § 216.]

Effective date—2011 c 19: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 11, 2011]." [2011 c 19 § 2.]

Severability—2003 c 216: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 216 § 8.]

Effective date—2003 c 216: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 216 § 9.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

[2011 RCW Supp—page 1406]

Chapter 71.12 RCW

PRIVATE ESTABLISHMENTS

Sections

71.12.590 Revocation of license for noncompliance—Exemption as to Christian Science establishments.

71.12.590 Revocation of license for noncompliance—Exemption as to Christian Science establishments. Failure to comply with any of the provisions of RCW 71.12.550 through 71.12.570 or the requirements of RCW 71.34.375 shall constitute grounds for revocation of license: PROVIDED, HOWEVER, That nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any establishment, as defined in this chapter conducted in accordance with the practice and principles of the body known as Church of Christ, Scientist. [2011 c 302 § 4; 1983 c 3 § 180; 1959 c 25 § 71.12.590. Prior: 1949 c 198 § 68; Rem. Supp. 1949 § 6953-67.]

Chapter 71.24 RCW

COMMUNITY MENTAL HEALTH SERVICES ACT

Sections

71.24.035 Secretary's powers and duties as state mental health authority—Secretary designated as regional support network, when.

71.24.160 Proof as to uses made of state funds—Use of maintenance of effort funds. (*Effective July 1, 2012.*)

71.24.035 Secretary's powers and duties as state mental health authority—Secretary designated as regional support network, when. (1) The department is designated as the state mental health authority.

(2) The secretary shall provide for public, client, and licensed service provider participation in developing the state mental health program, developing contracts with regional support networks, and any waiver request to the federal government under medicaid.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the regional support network if the regional support network fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045, until such time as a new regional support network is designated under RCW 71.24.320.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates regional biennial needs assessments and regional mental health service plans and state services for adults and children with mental illness. The secretary shall also develop a six-year state mental health plan;

(b) Assure that any regional or county community mental health program provides access to treatment for the region's residents, including parents who are respondents in dependency cases, in the following order of priority: (i) Persons with acute mental illness; (ii) adults with chronic mental

illness and children who are severely emotionally disturbed; and (iii) persons who are seriously disturbed. Such programs shall provide:

- (A) Outpatient services;
- (B) Emergency care services for twenty-four hours per day;
- (C) Day treatment for persons with mental illness which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;
- (D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;
- (E) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in persons with mental illness becoming engaged in meaningful and gainful full or part-time work. Other sources of funding such as the division of vocational rehabilitation may be utilized by the secretary to maximize federal funding and provide for integration of services;
- (F) Consultation and education services; and
- (G) Community support services;
- (c) Develop and adopt rules establishing state minimum standards for the delivery of mental health services pursuant to RCW 71.24.037 including, but not limited to:
 - (i) Licensed service providers. These rules shall permit a county-operated mental health program to be licensed as a service provider subject to compliance with applicable statutes and rules. The secretary shall provide for deeming of compliance with state minimum standards for those entities accredited by recognized behavioral health accrediting bodies recognized and having a current agreement with the department;
 - (ii) Regional support networks; and
 - (iii) Inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;
- (d) Assure that the special needs of persons who are minorities, elderly, disabled, children, low-income, and parents who are respondents in dependency cases are met within the priorities established in this section;
- (e) Establish a standard contract or contracts, consistent with state minimum standards, RCW 71.24.320 and 71.24.330, which shall be used in contracting with regional support networks. The standard contract shall include a maximum fund balance, which shall be consistent with that required by federal regulations or waiver stipulations;
- (f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of regional support networks and licensed service providers. The audit procedure shall focus on the outcomes of service and not the processes for accomplishing them;
- (g) Develop and maintain an information system to be used by the state and regional support networks that includes a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an

immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.420, and 71.05.440;

- (h) License service providers who meet state minimum standards;
- (i) Certify regional support networks that meet state minimum standards;
- (j) Periodically monitor the compliance of certified regional support networks and their network of licensed service providers for compliance with the contract between the department, the regional support network, and federal and state rules at reasonable times and in a reasonable manner;
- (k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;
- (l) Monitor and audit regional support networks and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;
- (m) Adopt such rules as are necessary to implement the department's responsibilities under this chapter;
- (n) Assure the availability of an appropriate amount, as determined by the legislature in the operating budget by amounts appropriated for this specific purpose, of community-based, geographically distributed residential services;
- (o) Certify crisis stabilization units that meet state minimum standards;
- (p) Certify clubhouses that meet state minimum standards; and
- (q) Certify triage facilities that meet state minimum standards.
- (6) The secretary shall use available resources only for regional support networks, except to the extent authorized, and in accordance with any priorities or conditions specified, in the biennial appropriations act.
- (7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.
- (8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to: (a) The law; (b) applicable rules and regulations; (c) applicable standards; or (d) state minimum standards.
- (9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.
- (10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional

support network or service provider refusing to consent to inspection or examination by the authority.

(11) Notwithstanding the existence or pursuit of any other remedy, the secretary may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(12) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall otherwise assure the effectuation of the purposes of these chapters.

(13) The standards for certification of crisis stabilization units shall include standards that:

(a) Permit location of the units at a jail facility if the unit is physically separate from the general population of the jail;

(b) Require administration of the unit by mental health professionals who direct the stabilization and rehabilitation efforts; and

(c) Provide an environment affording security appropriate with the alleged criminal behavior and necessary to protect the public safety.

(14) The standards for certification of a clubhouse shall at a minimum include:

(a) The facilities may be peer-operated and must be recovery-focused;

(b) Members and employees must work together;

(c) Members must have the opportunity to participate in all the work of the clubhouse, including administration, research, intake and orientation, outreach, hiring, training and evaluation of staff, public relations, advocacy, and evaluation of clubhouse effectiveness;

(d) Members and staff and ultimately the clubhouse director must be responsible for the operation of the clubhouse, central to this responsibility is the engagement of members and staff in all aspects of clubhouse operations;

(e) Clubhouse programs must be comprised of structured activities including but not limited to social skills training, vocational rehabilitation, employment training and job placement, and community resource development;

(f) Clubhouse programs must provide in-house educational programs that significantly utilize the teaching and tutoring skills of members and assist members by helping them to take advantage of adult education opportunities in the community;

(g) Clubhouse programs must focus on strengths, talents, and abilities of its members;

(h) The work-ordered day may not include medication clinics, day treatment, or other therapy programs within the clubhouse.

(15) The department shall distribute appropriated state and federal funds in accordance with any priorities, terms, or conditions specified in the appropriations act.

(16) The secretary shall assume all duties assigned to the nonparticipating regional support networks under chapters 71.05, 71.34, and 71.24 RCW. Such responsibilities shall include those which would have been assigned to the nonparticipating counties in regions where there are not participating regional support networks.

The regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05, 71.34, and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(17) The secretary shall:

(a) Disburse funds for the regional support networks within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(d) Deny all or part of the funding allocations to regional support networks based solely upon formal findings of non-compliance with the terms of the regional support network's contract with the department. Regional support networks disputing the decision of the secretary to withhold funding allocations are limited to the remedies provided in the department's contracts with the regional support networks.

(18) The department, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by freestanding evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the appropriate committees of the senate and the house of representatives. [2011 c 148 § 4. Prior: 2008 c 267 § 5; 2008 c 261 § 3; prior: 2007 c 414 § 2; 2007 c 410 § 8; 2007 c 375 § 12; 2006 c 333 § 201; prior: 2005 c 504 § 715; 2005 c 503 § 7; prior: 2001 c 334 § 7; 2001 c 323 § 10; 1999 c 10 § 4; 1998 c 245 § 137; prior: 1991 c 306 § 3; 1991 c 262 § 1; 1991 c 29 § 1; 1990 1st ex.s. c 8 § 1; 1989 c 205 § 3; 1987 c 105 § 1; 1986 c 274 § 3; 1982 c 204 § 4.]

Certification of triage facilities—Effective date—2011 c 148: See notes following RCW 71.05.020.

Intent—Findings—2008 c 261: See note following RCW 71.24.320.

Short title—2007 c 410: See note following RCW 13.34.138.

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Correction of references—Savings—Severability—2005 c 503: See notes following RCW 71.24.015.

Effective date—2001 c 334: See note following RCW 71.24.805.

Purpose—Intent—1999 c 10: See note following RCW 71.24.025.

Additional notes found at www.leg.wa.gov

71.24.160 Proof as to uses made of state funds—Use of maintenance of effort funds. (*Effective July 1, 2012.*) The regional support networks shall make satisfactory showing to the secretary that state funds shall in no case be used to replace local funds from any source being used to finance mental health services prior to January 1, 1990. Maintenance of effort funds devoted to judicial services related to involuntary commitment reimbursed under RCW 71.05.730 must be expended for other purposes that further treatment for mental health and chemical dependency disorders. [2011 c 343 § 6; 2001 c 323 § 15; 1989 c 205 § 7; 1982 c 204 § 10; 1967 ex.s. c 111 § 16.]

Intent—Effective date—2011 c 343: See notes following RCW 71.05.730.

Chapter 71.32 RCW

MENTAL HEALTH ADVANCE DIRECTIVES

Sections

71.32.020 Definitions. (*Effective January 1, 2012.*)

71.32.020 Definitions. (*Effective January 1, 2012.*)

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

(1) "Adult" means any individual who has attained the age of majority or is an emancipated minor.

(2) "Agent" has the same meaning as an attorney-in-fact or agent as provided in chapter 11.94 RCW.

(3) "Capacity" means that an adult has not been found to be incapacitated pursuant to this chapter or RCW 11.88.010(1)(e).

(4) "Court" means a superior court under chapter 2.08 RCW.

(5) "Health care facility" means a hospital, as defined in RCW 70.41.020; an institution, as defined in RCW 71.12.455; a state hospital, as defined in RCW 72.23.010; a nursing home, as defined in RCW 18.51.010; or a clinic that is part of a community mental health service delivery system, as defined in RCW 71.24.025.

(6) "Health care provider" means an osteopathic physician or osteopathic physician's assistant licensed under chapter 18.57 or 18.57A RCW, a physician or physician's assistant licensed under chapter 18.71 or 18.71A RCW, or an advanced registered nurse practitioner licensed under RCW 18.79.050.

(7) "Incapacitated" means an adult who: (a) Is unable to understand the nature, character, and anticipated results of proposed treatment or alternatives; understand the recognized serious possible risks, complications, and anticipated benefits in treatments and alternatives, including nontreatment; or communicate his or her understanding or treatment decisions; or (b) has been found to be incompetent pursuant to RCW 11.88.010(1)(e).

(8) "Informed consent" means consent that is given after the person: (a) Is provided with a description of the nature, character, and anticipated results of proposed treatments and alternatives, and the recognized serious possible risks, complications, and anticipated benefits in the treatments and alternatives, including nontreatment, in language that the person can reasonably be expected to understand; or (b) elects

not to be given the information included in (a) of this subsection.

(9) "Long-term care facility" has the same meaning as defined in RCW 43.190.020.

(10) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(11) "Mental health advance directive" or "directive" means a written document in which the principal makes a declaration of instructions or preferences or appoints an agent to make decisions on behalf of the principal regarding the principal's mental health treatment, or both, and that is consistent with the provisions of this chapter.

(12) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of chapter 71.05 RCW.

(13) "Principal" means an adult who has executed a mental health advance directive.

(14) "Professional person" means a mental health professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of chapter 71.05 RCW.

(15) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010. [2011 c 89 § 15; 2003 c 283 § 2.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Chapter 71.34 RCW

MENTAL HEALTH SERVICES FOR MINORS

Sections

71.34.020 Definitions. (*Effective January 1, 2012.*)

71.34.300 Responsibility of counties for evaluation and treatment services for minors. (*Effective July 1, 2012.*)

71.34.330 Attorneys appointed for minors—Compensation. (*Effective July 1, 2012.*)

71.34.340 Information concerning treatment of minors confidential—Disclosure—Admissible as evidence with written consent.

71.34.375 Parent-initiated treatment—Notice to parents of available treatment options.

71.34.377 Failure to notify parent or guardian of treatment options—Civil penalty.

71.34.379 Notice to parent or guardian—Treatment options—Policy and protocol adoption—Report.

71.34.415 Judicial services—Civil commitment cases—Reimbursement. (*Effective July 1, 2012.*)

71.34.020 Definitions. (*Effective January 1, 2012.*)

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

(1) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and who is board eligible or board certified in child psychiatry.

(2) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semes-

ter hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

(3) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of inpatient diagnosis, evaluation, or treatment or that the minor is in need of less restrictive alternative treatment.

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

(5) "Designated mental health professional" means a mental health professional designated by one or more counties to perform the functions of a designated mental health professional described in this chapter.

(6) "Evaluation and treatment facility" means a public or private facility or unit that is certified by the department to provide emergency, inpatient, residential, or outpatient mental health evaluation and treatment services for minors. A physically separate and separately-operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility which is part of or operated by the department or federal agency does not require certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

(7) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

(8) "Gravely disabled minor" means a minor who, as a result of a mental disorder, is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety, or manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(9) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, or residential treatment facility certified by the department as an evaluation and treatment facility for minors.

(10) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor who is not residing in a facility providing inpatient treatment as defined in this chapter.

(11) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others.

(12) "Medical necessity" for inpatient care means a requested service which is reasonably calculated to: (a) Diagnose, correct, cure, or alleviate a mental disorder; or (b) prevent the worsening of mental conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(13) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or intellectual disabilities alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

(14) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under this chapter.

(15) "Minor" means any person under the age of eighteen years.

(16) "Outpatient treatment" means any of the nonresidential services mandated under chapter 71.24 RCW and provided by licensed services providers as identified by RCW 71.24.025.

(17) "Parent" means:

(a) A biological or adoptive parent who has legal custody of the child, including either parent if custody is shared under a joint custody agreement; or

(b) A person or agency judicially appointed as legal guardian or custodian of the child.

(18) "Professional person in charge" or "professional person" means a physician or other mental health professional empowered by an evaluation and treatment facility with authority to make admission and discharge decisions on behalf of that facility.

(19) "Psychiatric nurse" means a registered nurse who has a bachelor's degree from an accredited college or university, and who has had, in addition, at least two years' experience in the direct treatment of persons who have a mental illness or who are emotionally disturbed, such experience gained under the supervision of a mental health professional. "Psychiatric nurse" shall also mean any other registered nurse who has three years of such experience.

(20) "Psychiatrist" means a person having a license as a physician in this state who has completed residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

(21) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

(22) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

(23) "Secretary" means the secretary of the department or secretary's designee.

(24) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

(25) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility offering inpatient treatment if the minor is being involuntarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter. [2011 c 89 § 16; 2010 c 94 § 20; 2006 c 93 § 2; 1998 c 296 § 8; 1985 c 354 § 2.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Purpose—2010 c 94: See note following RCW 44.04.280.

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

71.34.300 Responsibility of counties for evaluation and treatment services for minors. (Effective July 1, 2012.) (1) The county or combination of counties is responsible for development and coordination of the evaluation and treatment program for minors, for incorporating the program into the county mental health plan, and for coordination of evaluation and treatment services and resources with the community mental health program required under chapter 71.24 RCW.

(2) The county shall be responsible for maintaining its support of involuntary treatment services for minors at its 1984 level, adjusted for inflation, with the department responsible for additional costs to the county resulting from this chapter. Maintenance of effort funds devoted to judicial services related to involuntary commitment reimbursed under RCW 71.05.730 must be expended for other purposes that further treatment for mental health and chemical dependency disorders. [2011 c 343 § 7; 1985 c 354 § 14. Formerly RCW 71.34.140.]

Intent—Effective date—2011 c 343: See notes following RCW 71.05.730.

71.34.330 Attorneys appointed for minors—Compensation. (Effective July 1, 2012.) Attorneys appointed for minors under this chapter shall be compensated for their services as follows:

(1) Responsible others shall bear the costs of such legal services if financially able according to standards set by the court of the county in which the proceeding is held.

(2) If all responsible others are indigent as determined by these standards, the regional support network shall reimburse the county in which the proceeding is held for the direct costs of such legal services, as provided in RCW 71.05.730. [2011 c 343 § 8; 1985 c 354 § 23. Formerly RCW 71.34.230.]

Intent—Effective date—2011 c 343: See notes following RCW 71.05.730.

71.34.340 Information concerning treatment of minors confidential—Disclosure—Admissible as evidence with written consent. The fact of admission and all information obtained through treatment under this chapter is confidential. Confidential information may be disclosed only:

(1) In communications between mental health professionals to meet the requirements of this chapter, in the provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings;

(3) To persons with medical responsibility for the minor's care;

(4) To the minor, the minor's parent, and the minor's attorney, subject to RCW 13.50.100;

(5) When the minor or the minor's parent designates in writing the persons to whom information or records may be released;

(6) To the extent necessary to make a claim for financial aid, insurance, or medical assistance to which the minor may be entitled or for the collection of fees or costs due to providers for services rendered under this chapter;

(7) To the courts as necessary to the administration of this chapter;

(8) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address shall be disclosed upon request;

(9) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

(10) To the secretary for assistance in data collection and program evaluation or research, provided that the secretary adopts rules for the conduct of such evaluation and research. The rules shall include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding minors who have received services in a manner such that the minor is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/ "

(11) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence;

(12) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the

professional person in charge of the public or private agency or his or her designee and shall include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence;

(13) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

(14) Upon the death of a minor, to the minor's next of kin;

(15) To a facility in which the minor resides or will reside;

(16) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

This section shall not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary. The fact of admission and all information obtained pursuant to this chapter are not admissible as evidence in any legal proceeding outside this chapter, except guardianship or dependency, without the written consent of the minor or the minor's parent;

(17) For the purpose of a correctional facility participating in the postinstitutional medical assistance system supporting the expedited medical determinations and medical suspensions as provided in RCW 74.09.555 and 74.09.295. [2011 c 305 § 9; 2005 c 453 § 6; 2000 c 75 § 7; 1985 c 354 § 18. Formerly RCW 71.34.200.]

Findings—2011 c 305: See note following RCW 74.09.295.

Severability—2005 c 453: See note following RCW 9.41.040.

Intent—2000 c 75: See note following RCW 71.05.445.

71.34.375 Parent-initiated treatment—Notice to parents of available treatment options. (1) If a parent or guardian, for the purpose of mental health treatment or evaluation, brings his or her minor child to an evaluation and treatment facility, a hospital emergency room, an inpatient facility licensed under chapter 72.23 RCW, or an inpatient

facility licensed under chapter 70.41 or 71.12 RCW operating inpatient psychiatric beds for minors, the facility is required to promptly provide written and verbal notice of all statutorily available treatment options contained in this chapter. The notice need not be given more than once if written and verbal notice has already been provided and documented by the facility.

(2) The provision of notice must be documented by the facilities required to give notice under subsection (1) of this section and must be accompanied by a signed acknowledgment of receipt by the parent or guardian. The notice must contain the following information:

(a) All current statutorily available treatment options including but not limited to those provided in this chapter; and

(b) The procedures to be followed to utilize the treatment options described in this chapter.

(3) The department shall produce, and make available, the written notification that must include, at a minimum, the information contained in subsection (2) of this section. The department must revise the written notification as necessary to reflect changes in the law. [2011 c 302 § 1; 2003 c 107 § 1. Formerly RCW 71.34.056.]

71.34.377 Failure to notify parent or guardian of treatment options—Civil penalty. An evaluation and treatment facility that fails to comply with the requirement to provide verbal and written notice to a parent or guardian of a child under RCW 71.34.375 is subject to a civil penalty of one thousand dollars for each failure to provide adequate notice, unless the evaluation and treatment facility is a hospital licensed under chapter 70.41 RCW or a psychiatric hospital licensed under chapter 71.12 RCW in which case the department of health may enforce the notice requirements using its existing enforcement authority provided in chapters 70.41 and 71.12 RCW. [2011 c 302 § 2.]

71.34.379 Notice to parent or guardian—Treatment options—Policy and protocol adoption—Report. (1) By December 1, 2011, facilities licensed under chapter 70.41, 71.12, or 72.23 RCW are required to adopt policies and protocols regarding the notice requirements described in RCW 71.34.375; and

(2) By December 1, 2012, the department, in collaboration with the department of health, shall provide a detailed report to the legislature regarding the facilities' compliance with RCW 71.34.375 and subsection (1) of this section. [2011 c 302 § 5.]

71.34.415 Judicial services—Civil commitment cases—Reimbursement. (*Effective July 1, 2012.*) A county may apply to its regional support network for reimbursement of its direct costs in providing judicial services for civil commitment cases under this chapter, as provided in RCW 71.05.730. [2011 c 343 § 4.]

Intent—Effective date—2011 c 343: See notes following RCW 71.05.730.

Title 71A

DEVELOPMENTAL DISABILITIES

Chapters

- 71A.10 General provisions.
 71A.18 Service delivery.
 71A.20 Residential habilitation centers.

Chapter 71A.10 RCW
 GENERAL PROVISIONS

Sections

71A.10.020 Definitions.

71A.10.020 Definitions. As used in this title, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Community residential support services," or "community support services," and "in-home services" means one or more of the services listed in RCW 71A.12.040.

(2) "Crisis stabilization services" means services provided to persons with developmental disabilities who are experiencing behaviors that jeopardize the safety and stability of their current living situation. Crisis stabilization services include:

(a) Temporary intensive services and supports, typically not to exceed sixty days, to prevent psychiatric hospitalization, institutional placement, or other out-of-home placement; and

(b) Services designed to stabilize the person and strengthen their current living situation so the person may continue to safely reside in the community during and beyond the crisis period.

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

(4) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual. By January 1, 1989, the department shall promulgate rules which define neurological or other conditions in a way that is not limited to intelligence quotient scores as the sole determinant of these conditions, and notify the legislature of this action.

(5) "Eligible person" means a person who has been found by the secretary under RCW 71A.16.040 to be eligible for services.

(6) "Habilitation services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and to raise their levels of physical, mental, social, and vocational functioning. Habilitation services include education, training for employment, and therapy.

(7) "Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian,

a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney-at-law, a person's attorney-in-fact, or any other person who is authorized by law to act for another person.

(8) "Notice" or "notification" of an action of the secretary means notice in compliance with RCW 71A.10.060.

(9) "Residential habilitation center" means a state-operated facility for persons with developmental disabilities governed by chapter 71A.20 RCW.

(10) "Respite services" means relief for families and other caregivers of people with disabilities, typically not to exceed ninety days, to include both in-home and out-of-home respite care on an hourly and daily basis, including twenty-four hour care for several consecutive days. Respite care workers provide supervision, companionship, and personal care services temporarily replacing those provided by the primary caregiver of the person with disabilities. Respite care may include other services needed by the client, including medical care which must be provided by a licensed health care practitioner.

(11) "Secretary" means the secretary of social and health services or the secretary's designee.

(12) "Service" or "services" means services provided by state or local government to carry out this title.

(13) "State-operated living alternative" means programs for community residential services which may include assistance with activities of daily living, behavioral, habilitative, interpersonal, protective, medical, nursing, and mobility support to individuals who have been assessed by the department as meeting state and federal requirements for eligibility in home and community-based waiver programs for individuals with developmental disabilities. State-operated living alternatives are operated and staffed with state employees.

(14) "Supported living" means community residential services and housing which may include assistance with activities of daily living, behavioral, habilitative, interpersonal, protective, medical, nursing, and mobility supports provided to individuals with disabilities who have been assessed by the department as meeting state and federal requirements for eligibility in home and community-based waiver programs for individuals with developmental disabilities. Supported living services are provided under contracts with private agencies or with individuals who are not state employees.

(15) "Vacancy" means an opening at a residential habilitation center, which when filled, would not require the center to exceed its biennially budgeted capacity. [2011 1st sp.s. c 30 § 3; 2010 c 94 § 21; 1998 c 216 § 2; 1988 c 176 § 102.]

Findings—Intent—Conflict with federal requirements—2011 1st sp.s. c 30: See notes following RCW 71A.20.010.

Purpose—2010 c 94: See note following RCW 44.04.280.

Additional notes found at www.leg.wa.gov

Chapter 71A.18 RCW
 SERVICE DELIVERY

Sections

71A.18.040 Alternative service—Application—Determination—Reauthorization—Notice.

71A.18.040 Alternative service—Application—Determination—Reauthorization—Notice. (1) A person who is receiving a service under this title or the person's legal representative may request the secretary to authorize a service that is available under this title in place of a service that the person is presently receiving.

(2) The secretary upon receiving a request for change of service shall consult in the manner provided in RCW 71A.10.070 and within ninety days shall determine whether the following criteria are met:

(a) The alternative plan proposes a less dependent program than the person is participating in under current service;

(b) The alternative service is appropriate under the goals and objectives of the person's individual service plan;

(c) The alternative service is not in violation of applicable state and federal law; and

(d) The service can reasonably be made available.

(3) If the requested alternative service meets all of the criteria of subsection (2) of this section, the secretary shall be authorized as soon as reasonable, but not later than one hundred twenty days after completion of the determination process, unless the secretary determines that:

(a) The alternative plan is more costly than the current plan;

(b) Current appropriations are not sufficient to implement the alternative service without reducing services to existing clients; or

(c) Providing alternative service would take precedence over other priorities for delivery of service.

(4) The secretary shall give notice as provided in RCW 71A.10.060 of the grant of a request for a change of service. The secretary shall give notice as provided in RCW 71A.10.060 of denial of a request for change of service and of the right to an adjudicative proceeding.

(5)(a) When the secretary has changed service from a residential habilitation center to a setting other than a residential habilitation center, the secretary shall reauthorize service at the residential habilitation center if the secretary in reevaluating the needs of the person finds that the person needs service in a residential habilitation center.

(b) A person who has moved from a residential habilitation center that has closed to a community-based setting shall be offered a right to return to a residential habilitation center during the first year following their move to the community.

(6) If the secretary determines that current appropriations are sufficient to deliver additional services without reducing services to persons who are presently receiving services, the secretary is authorized to give persons notice under RCW 71A.10.060 that they may request the services as new services or as changes of services under this section. [2011 1st sp.s. c 30 § 9; 1989 c 175 § 142; 1988 c 176 § 603.]

Findings—Intent—Conflict with federal requirements—2011 1st sp.s. c 30: See notes following RCW 71A.20.010.

Additional notes found at www.leg.wa.gov

Chapter 71A.20 RCW

RESIDENTIAL HABILITATION CENTERS

Sections

71A.20.010 Scope of chapter.

71A.20.020 Residential habilitation centers.

71A.20.080 Return of resident to community—Notice—Adjudicative proceeding—Judicial review—Effect of appeal.

71A.20.170 Developmental disabilities community trust account—Creation—Required deposits—Permitted withdrawals.

71A.20.180 Closure of center—Department duties—Continuation of services.

71A.20.190 Developmental disability service system task force.

71A.20.010 Scope of chapter. (1) This chapter covers the operation of residential habilitation centers. The selection of persons to be served at the centers is governed by chapters 71A.16 and 71A.18 RCW. The purposes of this chapter are: To provide for those persons who are exceptional in their needs for care, treatment, and education by reason of developmental disabilities, residential care designed to develop their individual capacities to their optimum; to provide for admittance, withdrawal and discharge from state residential habilitation centers upon application; and to insure a comprehensive program for the education, guidance, care, treatment, and rehabilitation of all persons admitted to residential habilitation centers.

(2) Effective no later than July 1, 2012, no person under the age of sixteen years may be admitted to receive services at a residential habilitation center. Effective no later than July 1, 2012, no person under the age of twenty-one years may be admitted to receive services at a residential center, unless there are no service options available in the community to appropriately meet the needs of the individual. Such admission is limited to the provision of short-term respite or crisis stabilization services. [2011 1st sp.s. c 30 § 4; 1988 c 176 § 701.]

Findings—2011 1st sp.s. c 30: "The legislature finds that:

(1) A developmental disability is a natural part of human life and the presence of a developmental disability does not diminish a person's rights or the opportunity to participate in the life of the local community;

(2) The system of services for people with developmental disabilities should provide a balanced range of health, social, and supportive services at home or in other residential settings. The receipt of services should be coordinated so as to minimize administrative cost and service duplication, and eliminate unnecessarily complex system organization;

(3) The public interest would best be served by a broad array of services that would support people with developmental disabilities at home or in the community, whenever practicable, and that promote individual autonomy, dignity, and choice;

(4) In Washington state, people living in residential habilitation centers and their families are satisfied with the services they receive, and deserve to continue receiving services that meet their needs if they choose to receive those services in a community setting;

(5) As other care options for people with developmental disabilities become more available, the relative need for residential habilitation center beds is likely to decline. The legislature recognizes, however, that residential habilitation centers will continue to be a critical part of the state's long-term care options; and that such services should promote individual dignity, autonomy, and a home-like environment; and

(6) In a time of fiscal restraint, the state should consider the needs of all persons with developmental disabilities and spend its limited resources in a manner that serves more people, while not compromising the care people require." [2011 1st sp.s. c 30 § 1.]

Intent—2011 1st sp.s. c 30: "It is the intent of the legislature that:

(1) Community-based residential services supporting people with developmental disabilities should be available in the most integrated setting appropriate to individual needs; and

(2) An extensive transition planning and placement process should be used to ensure that people moving from a residential habilitation center to a community setting have the services and supports needed to meet their assessed health and welfare needs." [2011 1st sp.s. c 30 § 2.]

Conflict with federal requirements—2011 1st sp.s. c 30: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflict-

ing part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2011 1st sp.s. c 30 § 14.]

71A.20.020 Residential habilitation centers. (1) Except as provided in subsection (2) of this section, the following residential habilitation centers are permanently established to provide services to persons with developmental disabilities: Lakeland Village, located at Medical Lake, Spokane county; Rainier School, located at Buckley, Pierce county; Yakima Valley School, located at Selah, Yakima county; and Fircrest School, located at Seattle, King county.

(2) The Yakima Valley School, located at Selah, Yakima county, shall cease to operate as a residential habilitation center when the conditions in RCW 71A.20.180(2)(b) are met. [2011 1st sp.s. c 30 § 5; 1994 c 215 § 1; 1988 c 176 § 702.]

Findings—Intent—Conflict with federal requirements—2011 1st sp.s. c 30: See notes following RCW 71A.20.010.

Additional notes found at www.leg.wa.gov

71A.20.080 Return of resident to community—Notice—Adjudicative proceeding—Judicial review—Effect of appeal. (1) Whenever in the judgment of the secretary, the treatment and training of any resident of a residential habilitation center has progressed to the point that it is deemed advisable to return such resident to the community, the secretary may grant placement on such terms and conditions as the secretary may deem advisable after consultation in the manner provided in RCW 71A.10.070. The secretary shall give written notice of the decision to return a resident to the community as provided in RCW 71A.10.060. The notice must include a statement advising the recipient of the right to an adjudicative proceeding under RCW 71A.10.050 and the time limits for filing an application for an adjudicative proceeding. The notice must also include a statement advising the recipient of the right to judicial review of an adverse adjudicative order as provided in chapter 34.05 RCW.

(2) A placement decision shall not be implemented at any level during any period during which an appeal can be taken or while an appeal is pending and undecided, unless authorized by court order so long as the appeal is being diligently pursued. [2011 1st sp.s. c 30 § 10; 1989 c 175 § 143; 1988 c 176 § 708.]

Findings—Intent—Conflict with federal requirements—2011 1st sp.s. c 30: See notes following RCW 71A.20.010.

Additional notes found at www.leg.wa.gov

71A.20.170 Developmental disabilities community trust account—Creation—Required deposits—Permitted withdrawals. (1) The developmental disabilities community trust account is created in the state treasury. All net proceeds from the use of excess property identified in the 2002 joint legislative audit and review committee capital study or other studies of the division of developmental disabilities residential habilitation centers that would not impact current residential habilitation center operations must be deposited into the account.

(2) Proceeds may come from the lease of the land, conservation easements, sale of timber, or other activities short

of sale of the property, except as permitted under *section 7 of this act.

(3) "Excess property" includes that portion of the property at Rainier school previously under the cognizance and control of Washington State University for use as a dairy/forage research facility.

(4) Only investment income from the principal of the proceeds deposited into the trust account may be spent from the account. For purposes of this section, "investment income" includes lease payments, rent payments, or other periodic payments deposited into the trust account. For purposes of this section, "principal" is the actual excess land from which proceeds are assigned to the trust account.

(5) Moneys in the account may be spent only after appropriation. Expenditures from the account shall be used exclusively to provide family support and/or employment/day services to eligible persons with developmental disabilities who can be served by community-based developmental disability services. It is the intent of the legislature that the account should not be used to replace, supplant, or reduce existing appropriations.

(6) The account shall be known as the Dan Thompson memorial developmental disabilities community trust account. [2011 1st sp.s. c 30 § 12; 2008 c 265 § 1; 2005 c 353 § 1.]

***Reviser's note:** Section 7 of this act was vetoed by the governor.

Findings—Intent—Conflict with federal requirements—2011 1st sp.s. c 30: See notes following RCW 71A.20.010.

Effective dates—2005 c 353: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2005], except for section 3 of this act which takes effect July 1, 2005, and section 4 of this act which takes effect July 1, 2006." [2005 c 353 § 7.]

71A.20.180 Closure of center—Department duties—Continuation of services. (1) By December 31, 2011, the department shall:

(a) Close Frances Haddon Morgan residential rehabilitation center and relocate current residents consistent with the requirements of *section 7 of this act; and

(b) Establish at least two state operating living alternatives on the campus of the Frances Haddon Morgan center, if residents have chosen to receive care in such a setting and subject to federal requirements related to the receipt of federal medicaid matching funds.

(2)(a) Upon August 24, 2011, the department shall not permit any new admission to Yakima Valley School unless such admission is limited to the provision of short-term respite or crisis stabilization services. Except as provided in (b) of this subsection, no current permanent resident of Yakima Valley School shall be required or compelled to relocate to a different care setting as a result of chapter 30, Laws of 2011 1st sp. sess.

(b) The Yakima Valley School shall continue to operate as a residential habilitation center until such time that the census of permanent residents has reached sixteen persons. As part of the closure plan, at least two cottages will be converted to state-operated living alternatives, subject to federal requirements related to the receipt of federal medicaid matching funds.

(3) To assure the successful implementation of subsections (1) and (2) of this section, the department, within available funds:

(a) Shall establish state-operated living alternatives to provide community residential services to residential habilitation center residents transitioning to the community under chapter 30, Laws of 2011 1st sp. sess. who prefer a state-operated living alternative. The department shall offer residential habilitation center employees opportunities to work in state-operated living alternatives as they are established;

(b) May use existing supported living program capacity in the community for former residential habilitation center residents who prefer and choose a supported living program;

(c) Shall continue to staff and operate at Yakima Valley School crisis stabilization beds and respite service beds at the existing bed capacity as of June 1, 2011, for individuals with developmental disabilities requiring such services;

(d) Shall establish up to eight state-staffed crisis stabilization beds and up to eight state-staffed respite beds based upon funding provided in the appropriations act and the geographic areas with the greatest need for those services; and

(e) Shall establish regional or mobile specialty services evenly distributed throughout the state, such as dental care, physical therapy, occupational therapy, and specialized nursing care, which can be made available to former residents of residential habilitation centers and, within available funds, other individuals with developmental disabilities residing in the community. [2011 1st sp.s. c 30 § 6.]

***Reviser's note:** Section 7 of this act was vetoed by the governor.

Findings—Intent—Conflict with federal requirements—2011 1st sp.s. c 30: See notes following RCW 71A.20.010.

71A.20.190 Developmental disability service system task force. (1) A developmental disability service system task force is established.

(2) The task force shall be convened by September 1, 2011, and consist of the following members:

(a) Two members of the house of representatives appointed by the speaker of the house of representatives, from different political caucuses;

(b) Two members of the senate appointed by the president of the senate, from different political caucuses;

(c) The following members appointed by the governor:

(i) Two advocates for people with developmental disabilities;

(ii) A representative from the developmental disabilities council;

(iii) A representative of families of residents in residential habilitation centers;

(iv) Two representatives of labor unions representing workers who serve residents in residential habilitation centers;

(d) The secretary of the department of social and health services or their designee; and

(e) The *secretary of the department of general administration or their designee.

(3) The members of the task force shall select the chair or cochairs of the task force.

(4) Staff assistance for the task force will be provided by legislative staff and staff from the agencies listed in subsection (2) of this section.

[2011 RCW Supp—page 1416]

(5) The task force shall make recommendations on:

(a) The development of a system of services for persons with developmental disabilities that is consistent with the goals articulated in section 1, chapter 30, Laws of 2011 1st sp. sess.;

(b) The state's long-term needs for residential habilitation center capacity, including the benefits and disadvantages of maintaining one center in eastern Washington and one center in western Washington;

(c) A plan for efficient consolidation of institutional capacity, including whether one or more centers should be downsized or closed and, if so, a time frame for closure;

(d) Mechanisms through which any savings that result from the downsizing, consolidation, or closure of residential habilitation center capacity can be used to create additional community-based capacity;

(e) Strategies for the use of surplus property that results from the closure of one or more centers;

(f) Strategies for reframing the mission of Yakima Valley School consistent with chapter 30, Laws of 2011 1st sp. sess. that consider:

(i) The opportunity, where cost-effective, to provide medical services, including centers of excellence, to other clients served by the department; and

(ii) The creation of a treatment team consisting of crisis stabilization and short-term respite services personnel, with the long-term goal of expanding to include the provisions of specialty services such as dental care, physical therapy, occupational therapy, and specialized nursing care to individuals with developmental disabilities residing in the surrounding community.

(6) The task force shall report their recommendations to the appropriate committees of the legislature by December 1, 2012. [2011 1st sp.s. c 30 § 8.]

Reviser's note: *(1) The "secretary of the department of general administration" appears to be erroneous. The "director" was apparently intended, which was renamed the "director of the department of enterprise services" by 2011 1st sp.s. c 43.

(2) 2011 1st sp.s. c 30 directed that this section be added to chapter 70.02 RCW. This section has been codified in chapter 71A.20 RCW, which relates more directly to residential rehabilitation centers.

Findings—Intent—Conflict with federal requirements—2011 1st sp.s. c 30: See notes following RCW 71A.20.010.

Title 72

STATE INSTITUTIONS

Chapters

72.04A Probation and parole.

72.09 Department of corrections.

72.11 Offenders' responsibility for legal financial obligations.

72.23 Public and private facilities for mentally ill.

72.62 Vocational education programs.

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Chapter 72.04A RCW

PROBATION AND PAROLE

Sections

72.04A.120 Parolee supervision intake fees.

72.04A.120 Parolee supervision intake fees. (1) Any person placed on parole shall be required to pay the supervision intake fee, prescribed under RCW 9.94A.780(3). The department may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

- (a) The offender has diligently attempted but has been unable to obtain employment which provides the offender sufficient income to make such payments.
- (b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.
- (c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the department.
- (d) The offender's age prevents him from obtaining employment.
- (e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.
- (f) Other extenuating circumstances as determined by the department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment.

(3) Payment of the assessed amount shall constitute a condition of parole for purposes of the application of RCW 72.04A.090.

(4) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040. [2011 1st sp.s. c 40 § 12; 1991 c 104 § 2; 1989 c 252 § 20; 1982 c 207 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Chapter 72.09 RCW

DEPARTMENT OF CORRECTIONS

Sections

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72.09.480	Inmate funds subject to deductions—Definitions—Exceptions—Child support collection actions.
72.09.585	Mental health services information—Required inquiries and disclosures—Release to court, individuals, indeterminate sentence review board, state and local agencies.
72.09.680	Statewide security advisory committee.
72.09.682	Multidisciplinary teams—Inmate job assignments.
72.09.684	Training curriculum—Safety issues—Total confinement correctional facilities.
71.09.686	Body alarms and proximity cards—Study and report.
72.09.688	Video monitoring cameras—Study and report.
72.09.690	Pepper spray—Plan for use.

72.09.730 Notice to school district of offender release.

72.09.015 Definitions. The definitions in this section apply throughout this chapter.

(1) "Adult basic education" means education or instruction designed to achieve general competence of skills in reading, writing, and oral communication, including English as a second language and preparation and testing services for obtaining a high school diploma or a general equivalency diploma.

(2) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of offenders.

(3) "Civil judgment for assault" means a civil judgment for monetary damages awarded to a correctional officer or department employee entered by a court of competent jurisdiction against an inmate that is based on, or arises from, injury to the correctional officer or department employee caused by the inmate while the correctional officer or department employee was acting in the course and scope of his or her employment.

(4) "Community custody" has the same meaning as that provided in RCW 9.94A.030 and also includes community placement and community supervision as defined in RCW 9.94B.020.

(5) "Contraband" means any object or communication the secretary determines shall not be allowed to be: (a) Brought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary.

(6) "Correctional facility" means a facility or institution operated directly or by contract by the secretary for the purposes of incarcerating adults in total or partial confinement, as defined in RCW 9.94A.030.

(7) "County" means a county or combination of counties.

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

(9) "Earned early release" means earned release as authorized by RCW 9.94A.729.

(10) "Evidence-based" means a program or practice that has had multiple-site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population.

(11) "Extended family visit" means an authorized visit between an inmate and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the inmate is confined.

(12) "Good conduct" means compliance with department rules and policies.

(13) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

(14) "Immediate family" means the inmate's children, stepchildren, grandchildren, great grandchildren, parents, stepparents, grandparents, great grandparents, siblings, and a person legally married to or in a state registered domestic partnership with an inmate. "Immediate family" does not include an inmate adopted by another inmate or the immediate family of the adopted or adopting inmate.

(15) "Indigent inmate," "indigent," and "indigency" mean an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day

a request is made to utilize funds and during the thirty days previous to the request.

(16) "Individual reentry plan" means the plan to prepare an offender for release into the community. It should be developed collaboratively between the department and the offender and based on an assessment of the offender using a standardized and comprehensive tool to identify the offender's risks and needs. The individual reentry plan describes actions that should occur to prepare individual offenders for release from prison or jail, specifies the supervision and services they will experience in the community, and describes an offender's eventual discharge to aftercare upon successful completion of supervision. An individual reentry plan is updated throughout the period of an offender's incarceration and supervision to be relevant to the offender's current needs and risks.

(17) "Inmate" means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released from such facility on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

(18) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

(19) "Physical restraint" means the use of any bodily force or physical intervention to control an offender or limit an offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

(a) Prevent an offender from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive offender who is unwilling to leave the area voluntarily; or

(c) Guide an offender from one location to another.

(20) "Postpartum recovery" means (a) the entire period a woman or youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the woman or youth leaves the hospital, birthing center, or clinic.

(21) "Privilege" means any goods or services, education or work programs, or earned early release days, the receipt of which are directly linked to an inmate's (a) good conduct; and (b) good performance. Privileges do not include any goods or services the department is required to provide under the state or federal Constitution or under state or federal law.

(22) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(23) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(24) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.

(25) "Secretary" means the secretary of corrections or his or her designee.

(26) "Significant expansion" includes any expansion into a new product line or service to the class I business that results from an increase in benefits provided by the department, including a decrease in labor costs, rent, or utility rates (for water, sewer, electricity, and disposal), an increase in work program space, tax advantages, or other overhead costs.

(27) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

(28) "Transportation" means the conveying, by any means, of an incarcerated pregnant woman or youth from the correctional facility to another location from the moment she leaves the correctional facility to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated woman or youth from the correctional facility to a transport vehicle and from the vehicle to the other location.

(29) "Unfair competition" means any net competitive advantage that a business may acquire as a result of a correctional industries contract, including labor costs, rent, tax advantages, utility rates (water, sewer, electricity, and disposal), and other overhead costs. To determine net competitive advantage, the department of corrections shall review and quantify any expenses unique to operating a for-profit business inside a prison.

(30) "Vocational training" or "vocational education" means "vocational education" as defined in RCW 72.62.020.

(31) "Washington business" means an in-state manufacturer or service provider subject to chapter 82.04 RCW existing on June 10, 2004.

(32) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100. [2011 1st sp.s. c 21 § 38; 2011 c 282 § 1; 2010 c 181 § 1; 2009 c 521 § 165; 2008 c 231 § 47; 2007 c 483 § 202; 2004 c 167 § 6; 1995 1st sp.s. c 19 § 3; 1987 c 312 § 2.]

Reviser's note: This section was amended by 2011 c 282 § 1 and by 2011 1st sp.s. c 21 § 38, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Intent—2007 c 483: See note following RCW 72.09.270.

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.070 Correctional industries advisory committee—Recommendations. There is created a correctional industries advisory committee which shall have the composition provided in RCW 72.09.080. The advisory committee shall make recommendations to the secretary regarding the implementation of RCW 72.09.100. [2011 1st sp.s. c 21 § 35;

2004 c 167 § 1; 1994 sp.s. c 7 § 535; 1993 sp.s. c 20 § 3; 1989 c 185 § 4; 1981 c 136 § 8.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

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

Additional notes found at www.leg.wa.gov

72.09.080 Correctional industries advisory committee—Appointment of members, chair—Compensation—Support.

(1) The correctional industries advisory committee shall consist of nine voting members, appointed by the secretary. Each member shall serve a three-year staggered term. The speaker of the house of representatives and the president of the senate shall each appoint one member from each of the two largest caucuses in their respective houses. The legislators so appointed shall be nonvoting members and shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first. The nine members appointed by the secretary shall include three representatives from labor, three representatives from business representing cross-sections of industries and all sizes of employers, and three members from the general public.

(2) The committee shall elect a chair and such other officers as it deems appropriate from among the voting members.

(3) The voting members of the committee shall serve with compensation pursuant to RCW 43.03.240 and shall be reimbursed by the department for travel expenses and per diem under RCW 43.03.050 and 43.03.060, as now or hereafter amended. Legislative members shall be reimbursed under RCW 44.04.120, as now or hereafter amended.

(4) The secretary shall provide such staff services, facilities, and equipment as the board shall require to carry out its duties. [2011 1st sp.s. c 21 § 40; 1993 sp.s. c 20 § 4; 1989 c 185 § 5; 1981 c 136 § 9.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Additional notes found at www.leg.wa.gov

72.09.090 Correctional industries account—Expenditure—Profits—Appropriations.

The correctional industries account is established in the state treasury. The department of corrections shall deposit in the account all moneys collected and all profits that accrue from the industrial and agricultural operations of the department and any moneys appropriated to the account. Moneys in the account may be spent only for expenses arising in the correctional industries operations.

The division's net profits from correctional industries' sales and contracts shall be reinvested, without appropriation, in the expansion and improvement of correctional industries. However, the secretary shall annually recommend that some portion of the profits from correctional industries be returned to the state general fund.

The secretary shall request appropriations or increased appropriations whenever it appears that additional money is needed to provide for the establishment and operation of a comprehensive correctional industries program. [2011 1st

sp.s. c 21 § 36; 1989 c 185 § 6; 1987 c 7 § 203; 1981 c 136 § 10.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Additional notes found at www.leg.wa.gov

72.09.100 Inmate work program—Classes of work programs—Participation—Benefits. It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. It is also the intent of the legislature to ensure that the department, in developing and selecting correctional industries work programs, does not encourage the development of, or provide for selection of or contracting for, or the significant expansion of, any new or existing class I correctional industries work programs that unfairly compete with Washington businesses. The legislature intends that the requirements relating to fair competition in the correctional industries work programs be liberally construed by the department to protect Washington businesses from unfair competition. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) CLASS I: FREE VENTURE INDUSTRIES.

(a) The employer model industries in this class shall be operated and managed in total or in part by any profit or non-profit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

(b) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(c) The department shall review these proposed industries, including any potential new class I industries work program or the significant expansion of an existing class I industries work program, before the department contracts to provide such products or services. The review shall include the analysis required under RCW 72.09.115 to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new class I correctional industries work program, or an agreement for a significant expansion of an existing class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(d) The department shall supply appropriate security and custody services without charge to the participating firms.

(e) Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(f) An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment

compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) CLASS II: TAX REDUCTION INDUSTRIES.

(a) Industries in this class shall be state-owned and operated enterprises designed primarily to reduce the costs for goods and services for tax-supported agencies and for non-profit organizations.

(b)(i) The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit.

(ii) The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to the following:

(A) Public agencies;

(B) Nonprofit organizations;

(C) Private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization;

(D) An employee and immediate family members of an employee of the department;

(E) A person under the supervision of the department and his or her immediate family members; and

(F) A licensed health professional for the sole purpose of providing eyeglasses to enrollees of the state medical program at no more than the health professional's cost of acquisition.

(iii) The department shall authorize the type and quantity of items that may be purchased and sold under (b)(ii)(D) and (E) of this subsection.

(iv) It is prohibited to purchase any item purchased under (b)(ii)(D) and (E) of this subsection for the purpose of resale.

(v) Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons.

(c)(i) Class II correctional industries products and services shall be reviewed by the department before offering such products and services for sale to private contractors.

(ii) The secretary shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, by-products and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus by-products and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

(d) Security and custody services shall be provided without charge by the department.

(e) Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located

and which is approved by the director of correctional industries.

(f) Provisions of RCW 41.06.142 shall not apply to contracts with Washington state businesses entered into by the department through class II industries.

(3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.

(a) Industries in this class shall be operated by the department. They shall be designed and managed to accomplish the following objectives:

(i) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(ii) Whenever possible, to provide forty hours of work or work training per week.

(iii) Whenever possible, to offset tax and other public support costs.

(b) Class III correctional industries shall be reviewed by the department to set policy for work crews. The department shall prepare quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked.

(c) Supervising, management, and custody staff shall be employees of the department.

(d) All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

(e) Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) CLASS IV: COMMUNITY WORK INDUSTRIES.

(a) Industries in this class shall be operated by the department. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

(b) Class IV correctional industries shall be reviewed by the department to set policy for work crews. The department shall prepare quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. Class IV correctional industries operated in work camps established pursuant to RCW 72.64.050 are exempt from the requirements of this subsection (4)(b).

(c) Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

(d) The department shall reimburse participating units of local government for liability and workers compensation insurance costs.

(e) Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

(5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.

(a) Programs in this class shall be subject to supervision by the department. The purpose of this class of industries is to enable an inmate, placed on community supervision, to work off all or part of a community restitution order as ordered by the sentencing court.

(b) Employment shall be in a community restitution program operated by the state, local units of government, or a nonprofit agency.

(c) To the extent that funds are specifically made available for such purposes, the department shall reimburse nonprofit agencies for workers compensation insurance costs. [2011 1st sp.s. c 21 § 37; 2011 c 100 § 1; 2005 c 346 § 1; 2004 c 167 § 3; (2004 c 167 § 2 expired July 1, 2005). Prior: 2002 c 354 § 238; 2002 c 175 § 49; 1995 1st sp.s. c 19 § 33; 1994 c 224 § 1; 1992 c 123 § 1; 1990 c 22 § 1; 1989 c 185 § 7; 1986 c 193 § 2; 1985 c 151 § 1; 1983 c 255 § 5; 1981 c 136 § 11.]

Reviser's note: This section was amended by 2011 c 100 § 1 and by 2011 1st sp.s. c 21 § 37, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Effective date—2011 c 100: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 18, 2011]." [2011 c 100 § 2.]

Effective date—2004 c 167 § 3: "Section 3 of this act takes effect July 1, 2005." [2004 c 167 § 12.]

Expiration date—2004 c 167 § 2: "Section 2 of this act expires July 1, 2005." [2004 c 167 § 13.]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Effective date—2002 c 175: See note following RCW 7.80.130.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Fish and game projects in prison work programs subject to RCW 72.09.100: RCW 72.63.020.

Additional notes found at www.leg.wa.gov

72.09.111 Inmate wages—Deductions—Availability of savings—Recovery of cost of incarceration. (1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work programs. The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level, as defined in RCW 72.09.015.

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

(i) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration;

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(v) Twenty percent for payment of any civil judgment for assault for inmates who are subject to a civil judgment for assault in any Washington state court or federal court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

(i) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(ii) Ten percent to a department personal inmate savings account;

(iii) Fifteen percent to the department to contribute to the cost of incarceration;

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court;

(v) Fifteen percent for any child support owed under a support order; and

(vi) Fifteen percent for payment of any civil judgment for assault for inmates who are subject to a civil judgment for assault in any Washington state court or federal court.

(c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:

(i) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award.

(d) The formula shall include the following minimum deductions from class III gratuities:

(i) Five percent for the crime victims' compensation account provided in RCW 7.68.045;

(ii) Fifteen percent for any child support owed under a support order; and

(iii) Fifteen percent for payment of any civil judgment for assault for inmates who are subject to a civil judgment for assault in any Washington state court or federal court.

(e) The formula shall include the following minimum deduction from class IV gross gratuities:

(i) Five percent to the department to contribute to the cost of incarceration;

(ii) Fifteen percent for any child support owed under a support order; and

(iii) Fifteen percent for payment of any civil judgment for assault for inmates who are subject to a civil judgment for assault in any Washington state court or federal court.

(2) Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under subsection (1)(a)(ii), (b)(ii), or (c)(ii).

(3)(a) The department personal inmate savings account, together with any accrued interest, may be made available to an inmate at the following times:

(i) During confinement to pay for accredited postsecondary educational expenses;

(ii) Prior to the release from confinement to pay for department-approved reentry activities that promote successful community reintegration; or

(iii) When the secretary determines that an emergency exists for the inmate.

(b) The secretary shall establish guidelines for the release of funds pursuant to (a) of this subsection, giving consideration to the inmate's need for resources at the time of his or her release from confinement.

(c) Any funds remaining in an offender's personal inmate savings account shall be made available to the offender at the time of his or her release from confinement.

(4) The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

(5) In the event that the offender worker's wages, gratuity, or workers' compensation benefit is subject to garnishment for support enforcement, the crime victims' compensation account, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(6) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

(7) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(8) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(9) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW. [2011 c 282 § 2. Prior: 2010 c 122 § 5; 2010 c 116 § 1; 2009 c 479 § 60; 2007 c 483 § 605; 2004 c 167 § 7; prior: 2003 c 379 § 25; 2003 c 271 § 2; 2002 c 126 § 2; 1999 c 325 § 2; 1994 sp.s. c 7 § 534; 1993 sp.s. c 20 § 2.]

Effective date—2010 c 116: "This act takes effect July 1, 2010." [2010 c 116 § 2.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Finding—Intent—2007 c 483: See note following RCW 35.82.340.

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

[2011 RCW Supp—page 1422]

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

Additional notes found at www.leg.wa.gov

72.09.345 Sex offenders—Release of information to protect public—End-of-sentence review committee—Assessment—Records access—Review, classification, referral of offenders—Issuance of narrative notices. (1)

In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public concerning offenders convicted of sex offenses.

(2) In order for public agencies to have the information necessary to notify the public as authorized in RCW 4.24.550, the secretary shall establish and administer an end-of-sentence review committee for the purposes of assigning risk levels, reviewing available release plans, and making appropriate referrals for sex offenders.

(3) The committee shall assess, on a case-by-case basis, the public risk posed by:

(a) Offenders preparing for release from confinement for a sex offense or sexually violent offense committed on or after July 1, 1984;

(b) Sex offenders accepted from another state under a reciprocal agreement under the interstate corrections compact authorized in chapter 72.74 RCW;

(c) Juveniles preparing for release from confinement for a sex offense and releasing from the department of social and health services juvenile rehabilitation administration;

(d) Juveniles, following disposition, under the jurisdiction of a county juvenile court for a registerable sex offense; and

(e) Juveniles found to have committed a sex offense and accepted from another state under a reciprocal agreement under the interstate compact for juveniles authorized in chapter 13.24 RCW.

(4) Notwithstanding any other provision of law, the committee shall have access to all relevant records and information in the possession of public agencies relating to the offenders under review, including police reports; prosecutors' statements of probable cause; presentence investigations and reports; complete judgments and sentences; current classification referrals; criminal history summaries; violation and disciplinary reports; all psychological evaluations and psychiatric hospital reports; sex offender treatment program reports; and juvenile records. Records and information obtained under this subsection shall not be disclosed outside the committee unless otherwise authorized by law.

(5) The committee shall review each sex offender under its authority before the offender's release from confinement or start of the offender's term of community custody in order to: (a) Classify the offender into a risk level for the purposes of public notification under RCW 4.24.550; (b) where available, review the offender's proposed release plan in accordance with the requirements of RCW 72.09.340; and (c) make appropriate referrals.

(6) The committee shall classify as risk level I those sex offenders whose risk assessments indicate a low risk of reoffense within the community at large. The committee shall classify as risk level II those offenders whose risk assess-

ments indicate a moderate risk of reoffense within the community at large. The committee shall classify as risk level III those offenders whose risk assessments indicate a high risk of reoffense within the community at large.

(7) The committee shall issue to appropriate law enforcement agencies, for their use in making public notifications under RCW 4.24.550, narrative notices regarding the pending release of sex offenders from the department's facilities. The narrative notices shall, at a minimum, describe the identity and criminal history behavior of the offender and shall include the department's risk level classification for the offender. For sex offenders classified as either risk level II or III, the narrative notices shall also include the reasons underlying the classification. [2011 c 338 § 5; 2008 c 231 § 49; 1997 c 364 § 4.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Additional notes found at www.leg.wa.gov

72.09.480 Inmate funds subject to deductions—Definitions—Exceptions—Child support collection actions.

(1) Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(c) "Program" means any series of courses or classes necessary to achieve a proficiency standard, certificate, or postsecondary degree.

(2) When an inmate, except as provided in subsections (4) and (8) of this section, receives any funds in addition to his or her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to the following deductions and the priorities established in chapter 72.11 RCW:

(a) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(b) Ten percent to a department personal inmate savings account;

(c) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court;

(d) Twenty percent for any child support owed under a support order;

(e) Twenty percent to the department to contribute to the cost of incarceration; and

(f) Twenty percent for payment of any civil judgment for assault for all inmates who are subject to a civil judgment for assault in any Washington state court or federal court.

(3) When an inmate, except as provided in subsection (8) of this section, receives any funds from a settlement or award

resulting from a legal action, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

(4) When an inmate who is subject to a child support order receives funds from an inheritance, the deduction required under subsection (2)(e) and (f) of this section shall only apply after the child support obligation has been paid in full.

(5) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer.

(6)(a) The deductions required under subsection (2) of this section shall not apply to funds received by the department from an offender or from a third party on behalf of an offender for payment of education or vocational programs or postsecondary education degree programs as provided in RCW 72.09.460 and 72.09.465.

(b) The deductions required under subsection (2) of this section shall not apply to funds received by the department from a third party, including but not limited to a nonprofit entity on behalf of the department's education, vocation, or postsecondary education degree programs.

(7) The deductions required under subsection (2) of this section shall not apply to any money received by the department, on behalf of an inmate, from family or other outside sources for the payment of postage expenses. Money received under this subsection may only be used for the payment of postage expenses and may not be transferred to any other account or purpose. Money that remains unused in the inmate's postage fund at the time of release shall be subject to the deductions outlined in subsection (2) of this section.

(8) When an inmate sentenced to life imprisonment without possibility of release or sentenced to death under chapter 10.95 RCW receives funds, deductions are required under subsection (2) of this section, with the exception of a personal inmate savings account under subsection (2)(b) of this section.

(9) The secretary of the department of corrections, or his or her designee, may exempt an inmate from a personal inmate savings account under subsection (2)(b) of this section if the inmate's earliest release date is beyond the inmate's life expectancy.

(10) The interest earned on an inmate savings account created as a result of the *plan in section 4, chapter 325, Laws of 1999 shall be exempt from the mandatory deductions under this section and RCW 72.09.111.

(11) Nothing in this section shall limit the authority of the department of social and health services division of child support, the county clerk, or a restitution recipient from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 9.94A, 26.23, 74.20, or 74.20A RCW including, but not limited to, the collection of moneys received by the inmate from settlements or awards resulting from legal action. [2011 c 282 § 3; 2010 c 122 § 6; 2009 c 479 § 61. Prior: 2007 c 483 § 404; 2007 c 365 § 1; 2007 c 91 § 1; 2003 c 271 § 3; 1999 c 325 § 1; 1998 c 261 § 2; 1997 c 165 § 1; 1995 1st sp.s. c 19 § 8.]

***Reviser's note:** 1999 c 325 § 4 requires the secretary of corrections to prepare and submit a plan to the governor and legislature by December 1, 1999.

Effective date—2009 c 479: See note following RCW 2.56.030.

Findings—Intent—2007 c 483: See note following RCW 72.09.460.

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.585 Mental health services information—Required inquiries and disclosures—Release to court, individuals, indeterminate sentence review board, state and local agencies. (1) When the department is determining an offender's risk management level, the department shall inquire of the offender and shall be told whether the offender is subject to court-ordered treatment for mental health services or chemical dependency services. The department shall request and the offender shall provide an authorization to release information form that meets applicable state and federal requirements and shall provide the offender with written notice that the department will request the offender's mental health and substance abuse treatment information. An offender's failure to inform the department of court-ordered treatment is a violation of the conditions of supervision if the offender is in the community and an infraction if the offender is in confinement, and the violation or infraction is subject to sanctions.

(2) When an offender discloses that he or she is subject to court-ordered mental health services or chemical dependency treatment, the department shall provide the mental health services provider or chemical dependency treatment provider with a written request for information and any necessary authorization to release information forms. The written request shall comply with rules adopted by the department of social and health services or protocols developed jointly by the department and the department of social and health services. A single request shall be valid for the duration of the offender's supervision in the community. Disclosures of information related to mental health services made pursuant to a department request shall not require consent of the offender.

(3) The information received by the department under RCW 71.05.445 or 71.34.345 may be released to the indeterminate sentence review board as relevant to carry out its responsibility of planning and ensuring community protection with respect to persons under its jurisdiction. Further disclosure by the indeterminate sentence review board is subject to the limitations set forth in subsections (5) and (6) of this section and must be consistent with the written policy of the indeterminate sentence review board. The decision to disclose or not shall not result in civil liability for the indeterminate sentence review board or staff assigned to perform board-related duties provided that the decision was reached in good faith and without gross negligence.

(4) The information received by the department under RCW 71.05.445 or 71.34.345 may be used to meet the statutory duties of the department to provide evidence or report to the court. Disclosure to the public of information provided to the court by the department related to mental health services

shall be limited in accordance with RCW 9.94A.500 or this section.

(5) The information received by the department under RCW 71.05.445 or 71.34.345 may be disclosed by the department to other state and local agencies as relevant to plan for and provide offenders transition, treatment, and supervision services, or as relevant and necessary to protect the public and counteract the danger created by a particular offender, and in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. The information received by a state or local agency from the department shall remain confidential and subject to the limitations on disclosure set forth in chapters 70.02, 71.05, and 71.34 RCW and, subject to these limitations, may be released only as relevant and necessary to counteract the danger created by a particular offender.

(6) The information received by the department under RCW 71.05.445 or 71.34.345 may be disclosed by the department to individuals only with respect to offenders who have been determined by the department to have a high risk of reoffending by a risk assessment, as defined in RCW 9.94A.030, only as relevant and necessary for those individuals to take reasonable steps for the purpose of self-protection, or as provided in RCW 72.09.370(2). The information may not be disclosed for the purpose of engaging the public in a system of supervision, monitoring, and reporting offender behavior to the department. The department must limit the disclosure of information related to mental health services to the public to descriptions of an offender's behavior, risk he or she may present to the community, and need for mental health treatment, including medications, and shall not disclose or release to the public copies of treatment documents or records, except as otherwise provided by law. All disclosure of information to the public must be done in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. Nothing in this subsection prevents any person from reporting to law enforcement or the department behavior that he or she believes creates a public safety risk. [2011 1st sp.s. c 40 § 24; 2004 c 166 § 5; 2000 c 75 § 4.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

Intent—2000 c 75: See note following RCW 71.05.445.

72.09.680 Statewide security advisory committee. (1) The department shall establish a statewide security advisory committee to conduct comprehensive reviews of the department's total confinement security-related policies and procedures.

(2) The statewide security advisory committee shall make recommendations to the secretary regarding methods to provide consistent application of the policies and procedures regarding security issues in total confinement correctional facilities.

(3) The statewide security advisory committee shall include a balance of institutional staff including, but not limited to, custody staff. At a minimum, the statewide security advisory committee shall include:

(a) The director of prisons or his or her designee;

(b) A nonsupervisory classified employee and/or sergeant from each local advisory committee of a major facility and one nonsupervisory classified employee and/or sergeant representative from a minimum facility;

(c) A senior-ranking security custody staff member from each major correctional facility and a senior-ranking custody staff member from a minimum correctional facility;

(d) A senior-ranking community corrections officer; and

(e) A delegate from the union that represents department employees located at correctional facilities.

(4) The statewide security advisory committee shall develop guidelines to establish local security advisory committees for each total confinement correctional facility within the department. The chair of each local security advisory committee shall be the captain at a major facility and the lieutenant at a minimum security facility. The local security advisory committee should consist of a wide range of nonsupervisory classified employees and/or sergeants from the facility, such as medical staff, class counselors, program staff, and mental health staff.

(5) The department shall report back to the governor and appropriate committees of the legislature by November 1, 2011, and annually thereafter. The report shall include:

(a) Recommendations raised by both the statewide and local security advisory committees;

(b) Recommendations, if any, for improving the ability of nonsupervisory classified employees to provide input on safety concerns including labor and industries mandated safety committees and the inclusion of safety issues in collective bargaining;

(c) Actions taken by the department as a result of recommendations by the statewide and local security advisory committees; and

(d) Recommendations for additional resources or legislation to address security concerns in total confinement correctional facilities.

(6) The department shall report back to the governor and the appropriate committees of the legislature by November 1, 2011, on issues related to safety within community corrections. The department shall engage employees from all levels of the community corrections division in preparing the report. [2011 c 252 § 2.]

Intent—2011 c 252: "It is the intent of the legislature to promote safe state correctional facilities. Following the tragic murder of officer Jayme Biendl, the governor and department of corrections requested the national institute of corrections to review safety procedures at the Monroe reformatory. While the report found the Monroe reformatory is a safe institution, it recommends changes that would enhance safety. The legislature recognizes that operating safe institutions requires ongoing efforts to address areas where improvements can be made to enhance the safety of state correctional facilities. This act addresses ways to increase safety at state correctional facilities and implements changes recommended in the report of the national institute of corrections." [2011 c 252 § 1.]

72.09.682 Multidisciplinary teams—Inmate job assignments. (1) The department shall establish multidisciplinary teams at each total confinement correctional facility

that will evaluate offenders' placements in inmate job assignments and custody promotions. The teams at each facility shall determine suitable placements based on the offender's risk, behavior, or other factors considered by the team.

(2) At a minimum, each team shall have representation from a wide range of nonsupervisory classified employees and/or sergeants from the facility, such as medical staff, class counselors, program staff, and mental health staff. [2011 c 252 § 3.]

Intent—2011 c 252: See note following RCW 72.09.680.

72.09.684 Training curriculum—Safety issues—Total confinement correctional facilities. (1) The department shall develop training curriculum regarding staff safety issues at total confinement correctional facilities. At a minimum, the training shall address the following issues:

(a) Security routines;

(b) Physical plant layout;

(c) Offender movement and program area coverage; and

(d) Situational awareness and de-escalation techniques.

(2) The department shall seek the input of both the statewide security and local [statewide and local security] advisory committees in developing the curriculum.

(3) The department shall deliver such training to applicable correctional staff at in-service training by July 1, 2012. [2011 c 252 § 4.]

Intent—2011 c 252: See note following RCW 72.09.680.

72.09.686 Body alarms and proximity cards—Study and report. (1) The department may pilot the use of body alarms and proximity cards within available resources.

(2) The department shall hire a consultant to study the feasibility of implementing a statewide system for staff safety, utilizing body alarms and proximity cards for staff within the department's total confinement correctional facilities and report findings and recommendations to the governor and appropriate committees of the legislature by November 1, 2011. At a minimum, the report shall include:

(a) Recommendations for the use of body alarms by security level;

(b) Recommendations for specific positions that should require the use of body alarms;

(c) The information technological and infrastructure requirements needed for body alarms and proximity cards;

(d) The training requirements for body alarms;

(e) Lessons learned from any pilot project the department may implement in the interim;

(f) The estimated cost of the alarms and proximity cards and needed supporting infrastructure, staffing, and training requirements.

(3) The consultant shall seek the input of both the statewide and local security advisory committees in preparing his or her report. [2011 c 252 § 5.]

Intent—2011 c 252: See note following RCW 72.09.680.

72.09.688 Video monitoring cameras—Study and report. (1) The department shall hire a consultant to study the deployment of video monitoring cameras within the department to make recommendations regarding statewide standards for the positioning and use of video monitoring

cameras in total confinement correctional facilities and report findings and recommendations to the governor and appropriate committees of the legislature by November 1, 2011. At a minimum, the report shall include:

(a) Recommendations for the use of video monitoring cameras by security level;

(b) Recommendations for specific locations within a total confinement correctional facility which would benefit from the use of video monitoring cameras;

(c) The information technological and infrastructure requirements needed for effective use of video monitoring cameras;

(d) Recommendations for how video monitoring cameras would best be deployed in current total confinement correctional facilities;

(e) Recommendations about how video monitoring cameras should be incorporated into future prison construction to insure consistency in camera use system-wide;

(f) The estimated cost of the video monitoring cameras, supporting infrastructure needed, and staffing required by the total confinement correctional facility.

(2) The consultant shall seek the input of both the state-wide and local security advisory committees in preparing his or her report. [2011 c 252 § 6.]

Intent—2011 c 252: See note following RCW 72.09.680.

72.09.690 Pepper spray—Plan for use. (1) The department shall develop a comprehensive plan for the use of oleoresin capsicum aerosol products, commonly referred to as pepper spray, as a security measure available for staff at total confinement correctional facilities.

(2) The department may initiate a pilot project, within available funds, to expand the deployment of oleoresin capsicum aerosol products within total confinement correctional facilities.

(3) The department's plan for the deployment of oleoresin capsicum aerosol products to staff shall include findings, if any, from the pilot project, recommendations regarding which facility's use should be limited to, what the training requirements should be, the estimated costs, and an implementation schedule.

(4) The department shall seek the input of both the state-wide and local security advisory committees in developing its plan.

(5) The department shall report its plan, including costs, to the governor and appropriate committees of the legislature by November 1, 2011. [2011 c 252 § 7.]

Intent—2011 c 252: See note following RCW 72.09.680.

72.09.730 Notice to school district of offender release.

(1) At the earliest possible date and in no event later than thirty days before an offender is released from confinement, the department shall provide notice to the school district board of directors of the district in which the offender last attended school if the offender:

(a) Is twenty-one years of age or younger at the time of release;

(b) Has been convicted of a violent offense, a sex offense, or stalking; and

(c) Last attended school in this state.

(2) This section applies whenever an offender is being released from total confinement, regardless if the release is to parole, community custody, work release placement, or furlough. [2011 c 107 § 1.]

Chapter 72.11 RCW

**OFFENDERS' RESPONSIBILITY FOR
LEGAL FINANCIAL OBLIGATIONS**

Sections

72.11.040 Cost of supervision fund.

72.11.040 Cost of supervision fund. The cost of supervision fund is created in the custody of the state treasurer. All receipts from assessments made under RCW 9.94A.780, 9.94A.74504, and 72.04A.120 shall be deposited into the fund. Expenditures from the fund may be used only to support the collection of legal financial obligations. Only the secretary of the department of corrections or the secretary's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [2011 1st sp.s. c 40 § 13; 2005 c 518 § 943; 2003 1st sp.s. c 25 § 936; 2001 2nd sp.s. c 7 § 919; 2000 2nd sp.s. c 1 § 914; 1999 c 309 § 921; 1989 c 252 § 26.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

Chapter 72.23 RCW

**PUBLIC AND PRIVATE FACILITIES
FOR MENTALLY ILL**

Sections

72.23.025 Eastern and western state hospitals—Primary diagnosis of mental disorder—Duties—Institutes for the study and treatment of mental disorders established.

72.23.025 Eastern and western state hospitals—Primary diagnosis of mental disorder—Duties—Institutes for the study and treatment of mental disorders established. (1) It is the intent of the legislature to improve the quality of service at state hospitals, eliminate overcrowding, and more specifically define the role of the state hospitals. The legislature intends that eastern and western state hospitals shall become clinical centers for handling the most complicated long-term care needs of patients with a primary diagnosis of mental disorder. To this end, the legislature intends that funds appropriated for mental health programs, including funds for regional support networks and the state hospitals be used for persons with primary diagnosis of mental disorder. The legislature finds that establishment of institutes for the study and treatment of mental disorders at both eastern state

hospital and western state hospital will be instrumental in implementing the legislative intent.

(2)(a) There is established at eastern state hospital and western state hospital, institutes for the study and treatment of mental disorders. The institutes shall be operated by joint operating agreements between state colleges and universities and the department of social and health services. The institutes are intended to conduct training, research, and clinical program development activities that will directly benefit persons with mental illness who are receiving treatment in Washington state by performing the following activities:

(i) Promote recruitment and retention of highly qualified professionals at the state hospitals and community mental health programs;

(ii) Improve clinical care by exploring new, innovative, and scientifically based treatment models for persons presenting particularly difficult and complicated clinical syndromes;

(iii) Provide expanded training opportunities for existing staff at the state hospitals and community mental health programs;

(iv) Promote bilateral understanding of treatment orientation, possibilities, and challenges between state hospital professionals and community mental health professionals.

(b) To accomplish these purposes the institutes may, within funds appropriated for this purpose:

(i) Enter joint operating agreements with state universities or other institutions of higher education to accomplish the placement and training of students and faculty in psychiatry, psychology, social work, occupational therapy, nursing, and other relevant professions at the state hospitals and community mental health programs;

(ii) Design and implement clinical research projects to improve the quality and effectiveness of state hospital services and operations;

(iii) Enter into agreements with community mental health service providers to accomplish the exchange of professional staff between the state hospitals and community mental health service providers;

(iv) Establish a student loan forgiveness and conditional scholarship program to retain qualified professionals at the state hospitals and community mental health providers when the secretary has determined a shortage of such professionals exists.

(c) Notwithstanding any other provisions of law to the contrary, the institutes may enter into agreements with the department or the state hospitals which may involve changes in staffing necessary to implement improved patient care programs contemplated by this section.

(d) The institutes are authorized to seek and accept public or private gifts, grants, contracts, or donations to accomplish their purposes under this section. [2011 1st sp.s. c 21 § 1; 2006 c 333 § 204; 1998 c 245 § 141; 1992 c 230 § 1; 1989 c 205 § 21.]

Effective date—2011 1st sp.s. c 21: "Except for sections 53 and 60 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 21 § 64.]

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

Intent—1992 c 230: "It is the intent of this act to:

(1) Focus, restate, and emphasize the legislature's commitment to the mental health reform embodied in chapter 111 [205], Laws of 1989 (SB 5400);

(2) Eliminate, or schedule for repeal, statutes that are no longer relevant to the regulation of the state's mental health program; and

(3) Reaffirm the state's commitment to provide incentives that reduce reliance on inappropriate state hospital or other inpatient care." [1992 c 230 § 3.]

Additional notes found at www.leg.wa.gov

Chapter 72.62 RCW

VOCATIONAL EDUCATION PROGRAMS

Sections

72.62.020 "Vocational education" defined.

72.62.020 "Vocational education" defined. When used in this chapter, unless the context otherwise requires:

The term "vocational education" means a planned series of learning experiences, the specific objective of which is to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations, but shall not mean programs the primary characteristic of which is repetitive work for the purpose of production, including the correctional industries program. Nothing in this section shall be construed to prohibit the department of corrections from identifying and establishing trade advisory or apprenticeship committees to advise them on correctional industries work programs. [2011 1st sp.s. c 21 § 39; 1989 c 185 § 12; 1972 ex.s. c 7 § 2.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Chapter 72.66 RCW

FURLOUGHS FOR PRISONERS

Sections

72.66.016 Minimum time served requirement.

72.66.016 Minimum time served requirement. (1) A furlough shall not be granted to a resident if the furlough would commence prior to the time the resident has served the minimum amounts of time provided under this section:

(a) If his or her minimum term of imprisonment is longer than twelve months, he or she shall have served at least six months of the term;

(b) If his or her minimum term of imprisonment is less than twelve months, he or she shall have served at least ninety days and shall have no longer than six months left to serve on his or her minimum term;

(c) If he or she is serving a mandatory minimum term of confinement, he or she shall have served all but the last six months of such term.

(2) A person convicted and sentenced for a violent offense as defined in RCW 9.94A.030 is not eligible for furlough until the person has served at least one-half of the minimum term. [2011 1st sp.s. c 40 § 35; 1983 c 255 § 8; 1973 c 20 § 5.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

Title 73

VETERANS AND VETERANS' AFFAIRS

Chapters

73.08 Veterans' relief.

73.16 Employment and reemployment.

73.24 Burial.

Chapter 73.08 RCW VETERANS' RELIEF

Sections

73.08.005 Definitions.

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

(1) "Direct costs" includes those allowable costs that can be readily assigned to the statutory objectives of this chapter, consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(2) "Family" means the spouse or domestic partner, surviving spouse, surviving domestic partner, and dependent children of a living or deceased veteran.

(3) "Indigent" means a person who is defined as such by the county legislative authority using one or more of the following definitions:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, medical care services, or supplemental security income;

(b) Receiving an annual income, after taxes, of up to one hundred fifty percent or less of the current federally established poverty level, or receiving an annual income not exceeding a higher qualifying income established by the county legislative authority; or

(c) Unable to pay reasonable costs for shelter, food, utilities, and transportation because his or her available funds are insufficient.

(4) "Indirect costs" includes those allowable costs that are generally associated with carrying out the statutory objectives of this chapter, but the identification and tracking of those costs cannot be readily assigned to a specific statutory objective without an accounting effort that is disproportionate to the benefit received. A county legislative authority may allocate allowable indirect costs to its veterans' assistance fund if it is accomplished in a manner consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(5) "Veteran" has the same meaning as defined in RCW 41.04.005 and 41.04.007, and includes a current member of

the national guard or armed forces reserves who has been deployed to serve in an armed conflict.

(6) "Veterans' advisory board" means a board established by a county legislative authority under the authority of RCW 73.08.035.

(7) "Veterans' assistance fund" means an account in the custody of the county auditor, or the chief financial officer in a county operating under a charter, that is funded by taxes levied under the authority of RCW 73.08.080.

(8) "Veterans' assistance program" means a program approved by the county legislative authority under the authority of RCW 73.08.010 that is fully or partially funded by the veterans' assistance fund authorized by RCW 73.08.080. [2011 1st sp.s. c 36 § 17; 2010 1st sp.s. c 8 § 17; 2009 c 35 § 1; 2008 c 6 § 502; 2005 c 250 § 2.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Intent—2005 c 250: "(1) It is the intent of the legislature that each county establish a veterans' assistance program to benefit indigent veterans and their families. These programs must be funded, at least in part, by veterans' assistance funds. The legislature intends also for each county to establish a veterans' advisory board responsible for advising the county legislative authority on needed and appropriate assistance programs for local indigent veterans and their families. Recognizing the valuable insight and perspectives that veterans offer, it is the intent of the legislature that each board be comprised entirely of veterans.

(2) The legislature recognizes that ongoing veterans' relief or assistance programs in some areas of the state have provided meaningful assistance to indigent veterans and family members. The legislature further recognizes that veterans' service organizations have traditionally been the initial point of contact for indigent veterans and family members seeking assistance. In recognition of these factors, the legislature intends to authorize, upon the satisfaction of certain administrative requirements, existing veterans' relief or assistance programs to continue providing needed and effective assistance to indigent veterans and their families.

(3) The legislature recognizes that counties respond to the needs of indigent veterans and family members in the manner most appropriate to the needs and resources of the county. The legislature intends for the provisions of this act to facilitate the effective use of assistance funds through efficient model programs that benefit veterans and family members experiencing financial hardships.

(4) It is the policy of the state of Washington that bias shall not play a role in the distribution of the veterans' assistance fund." [2005 c 250 § 1.]

Chapter 73.16 RCW

EMPLOYMENT AND REEMPLOYMENT

Sections

73.16.110 Preference in private employment—Permissive.

73.16.110 Preference in private employment—Permissive. (1) The legislature intends to establish a permissive preference in private employment for certain veterans.

(2) In every private, nonpublic employment in this state, honorably discharged soldiers, sailors, and marines who are veterans of any war of the United States, or of any military campaign for which a campaign ribbon has been awarded, and their widows or widowers, may be preferred for employment. Spouses of honorably discharged veterans who have a service connected permanent and total disability may also be

preferred for employment. These preferences are not considered violations of any state or local equal employment opportunity law, including but not limited to any statute or regulation adopted under chapter 49.60 RCW.

(3) "Veteran" has the same meanings as defined in RCW 41.04.005 and 41.04.007, and includes a current member of the national guard or armed forces reserves who has been deployed to serve in an armed conflict. [2011 c 144 § 1.]

Chapter 73.24 RCW

BURIAL

Sections

73.24.020 Contract for care of veterans' plot at Olympia.

73.24.020 Contract for care of veterans' plot at Olympia. The director of the department of enterprise services is hereby authorized and directed to contract with Olympia Lodge No. 1, F. & A.M., a corporation for the improvement and perpetual care of the state veterans' plot in the Masonic cemetery at Olympia; such care to include the providing of proper curbs and walks, cultivating, reseeding and fertilizing grounds, repairing and resetting the bases and monuments in place on the ground, leveling grounds, and transporting and setting headstones for graves of persons hereafter buried on the plot. [2011 1st sp.s. c 43 § 257; 1937 c 36 § 1; RRS § 10758-1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Cemeteries, endowment and nonendowment care: Chapters 68.40, 68.44 RCW.

Title 74

PUBLIC ASSISTANCE

Chapters

- 74.04 General provisions—Administration.
- 74.08 Eligibility generally—Standards of assistance.
- 74.08A Washington WorkFirst temporary assistance for needy families.
- 74.09 Medical care.
- 74.09A Medical assistance—Coordination of benefits—Computerized information transfer.
- 74.12 Temporary assistance for needy families.
- 74.13 Child welfare services.
- 74.14A Children and family services.
- 74.14C Family preservation services.
- 74.15 Care of children, expectant mothers, developmentally disabled.
- 74.20 Support of dependent children.
- 74.31 Traumatic brain injuries.
- 74.34 Abuse of vulnerable adults.
- 74.39A Long-term care services options—Expansion.
- 74.42 Nursing homes—Resident care, operating standards.
- 74.46 Nursing facility medicaid payment system.
- 74.48 Skilled nursing facility safety net assessments.
- 74.50 Alcoholism and drug addiction treatment and support.
- 74.60 Hospital safety net assessment.

74.62 Aged, blind, or disabled assistance program—Pregnant women assistance program—Essential needs and housing support program.

Chapter 74.04 RCW

GENERAL PROVISIONS—ADMINISTRATION

Sections

- 74.04.004 Definitions—Fraud and abuse.
- 74.04.005 Definitions—Eligibility. (*Effective until November 1, 2011.*)
- 74.04.005 Definitions—Eligibility. (*Effective November 1, 2011.*)
- 74.04.0052 Teen applicants' living situation—Criteria—Presumption—Protective payee—Adoption referral.
- 74.04.012 Office of fraud and accountability.
- 74.04.014 Office of fraud and accountability—Authority—Confidentiality.
- 74.04.015 Administration and disbursement of federal funds—Public assistance—Medical services programs.
- 74.04.025 Bilingual services for non-English speaking applicants and recipients—Bilingual personnel, when—Primary language pamphlets and written materials.
- 74.04.050 Department to administer certain public assistance programs—Authority to administer medical services programs.
- 74.04.055 Cooperation with federal government—Construction—Conflict with federal requirements.
- 74.04.060 Records, confidential—Exceptions—Penalty.
- 74.04.062 Disclosure of recipient location to police officer or immigration official.
- 74.04.120 Repealed.
- 74.04.225 Opportunity portal—Access to available services facilitated—Report to legislature and governor.
- 74.04.230 Medical care services benefits—Mental health services.
- 74.04.266 Aged, blind, or disabled assistance—Medical care services—Earned income exemption to be established for unemployable persons.
- 74.04.270 Repealed.
- 74.04.290 Subpoena of witnesses, books, records, etc.
- 74.04.620 State supplement to national program of supplemental security income—Authorized—Reimbursement of interim assistance, attorneys' fees.
- 74.04.652 Early supplemental security income transition project—Implementation—Contracts—Report.
- 74.04.655 Vocational rehabilitation—Assessment, referral.
- 74.04.657 Veterans' benefits—Assessment for eligibility.
- 74.04.770 Consolidated standards of need—Rateable reductions—Grant maximums.
- 74.04.810 Repealed.

74.04.004 Definitions—Fraud and abuse. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abuse" means any intentional use of public assistance benefits that constitutes a violation of any state statute or regulation relating to the use of public assistance benefits. This definition excludes medicaid and other medical programs as defined in chapter 74.09 RCW, and fraud and abuse committed by medical providers and recipients of medicaid and other medical program services.

(2) "Disclosable information" means public information that (a) is not exempt from disclosure under chapter 42.56 RCW; and (b) does not pertain to an ongoing investigation.

(3) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person.

(4) "Office" means the office of fraud and accountability.

(5) "Public assistance" or "public assistance programs" means public aid to persons in need including assistance grants, food assistance, work relief, disability lifeline benefits, temporary assistance for needy families, and, for pur-

poses of this section, working connections child care subsidies. This definition excludes medicaid and other medical programs as defined in chapter 74.09 RCW, and fraud and abuse committed by medical providers and recipients of medicaid and other medical program services. [2011 1st sp.s. c 42 § 21.]

Finding—2011 1st sp.s. c 42: "The legislature finds that eliminating waste, fraud, and abuse of public assistance benefits should be a priority of the department of social and health services, and this can best be reflected in a newly organized, accountable, and proactive fraud unit directly under the secretary's authority with the resources necessary to combat fraud and to ensure the confidence of the public in the critical social safety net programs it funds." [2011 1st sp.s. c 42 § 20.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

74.04.005 Definitions—Eligibility. (Effective until November 1, 2011.) For the purposes of this title, unless the context indicates otherwise, the following definitions shall apply:

(1) "Applicant"—Any person who has made a request, or on behalf of whom a request has been made, to any county or local office for assistance.

(2) "Authority" means the health care authority.

(3) "County or local office"—The administrative office for one or more counties or designated service areas.

(4) "Department"—The department of social and health services.

(5) "Director" means the director of the health care authority.

(6) "Disability lifeline expedited" means a component of the disability lifeline program under which persons receiving disability lifeline benefits have been determined, after examination by an appropriate health care provider, to be likely to be eligible for federal supplemental security income benefits based on medical and behavioral health evidence that meets the disability standards used for the federal supplemental security income program.

(7) "Disability lifeline program" means a program that provides aid and support in accordance with the conditions set out in this subsection.

(a) Aid and assistance shall be provided to persons who are not eligible to receive federal aid assistance, other than basic food benefits transferred electronically and medical assistance and meet one of the following conditions:

(i) Are pregnant and in need, based upon the current income and resource requirements of the federal temporary assistance for needy families program; or

(ii) Are incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ninety days as determined by the department. The standard for incapacity in this subsection, as evidenced by the ninety-day duration standard, is not intended to be as stringent as federal supplemental security income disability standards; and

(A) Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law;

(B) Have furnished the department their social security number. If the social security number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of benefits,

and the social security number shall be provided to the department upon receipt;

(C) Have not refused or failed without good cause to participate in drug or alcohol treatment if an assessment by a certified chemical dependency counselor indicates a need for such treatment. Good cause must be found to exist when a person's physical or mental condition, as determined by the department, prevents the person from participating in drug or alcohol dependency treatment, when needed outpatient drug or alcohol treatment is not available to the person in the county of his or her residence or when needed inpatient treatment is not available in a location that is reasonably accessible for the person; and

(D) Have not refused or failed without good cause to participate in vocational rehabilitation services, if an assessment conducted under RCW 74.04.655 indicates that the person might benefit from such services. Good cause must be found to exist when a person's physical or mental condition, as determined by the department, prevents the person from participating in vocational rehabilitation services, or when vocational rehabilitation services are not available to the person in the county of his or her residence.

(b)(i) Persons who initially apply and are found eligible for disability lifeline benefits based upon incapacity from gainful employment under (a) of this subsection on or after September 2, 2010, who are homeless and have been assessed as needing chemical dependency or mental health treatment or both, must agree, as a condition of eligibility for the disability lifeline program, to accept a housing voucher in lieu of a cash grant if a voucher is available. The department shall establish the dollar value of the housing voucher. The dollar value of the housing voucher may differ from the value of the cash grant. Persons receiving a housing voucher under this subsection also shall receive a cash stipend of fifty dollars per month.

(ii) If the department of commerce has determined under *RCW 43.330.175 that sufficient housing is not available, persons described in this subsection who apply for disability lifeline benefits during the time period that housing is not available shall receive a cash grant in lieu of a cash stipend and housing voucher.

(iii) Persons who refuse to accept a housing voucher under this subsection but otherwise meet the eligibility requirements of (a) of this subsection are eligible for medical care services benefits under RCW 74.09.035, subject to the time limits in (h) of this subsection.

(c) The following persons are not eligible for the disability lifeline program:

(i) Persons who are unemployable due primarily to alcohol or drug addiction. These persons shall be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. This subsection shall not be construed to prohibit the department from granting disability lifeline benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the disability lifeline program;

(ii) Persons who refuse or fail to cooperate in obtaining federal aid assistance, without good cause.

(d) Disability lifeline benefits shall be provided only to persons who are not members of assistance units receiving federal aid assistance, except as provided in (a) of this subsection, and who will accept available services that can reasonably be expected to enable the person to work or reduce the need for assistance unless there is good cause to refuse. Failure to accept such services shall result in termination until the person agrees to cooperate in accepting such services and subject to the following maximum periods of ineligibility after reapplication:

- (i) First failure: One week;
- (ii) Second failure within six months: One month;
- (iii) Third and subsequent failure within one year: Two months.

(e) Persons who are likely eligible for federal supplemental security income benefits shall be moved into the disability lifeline expedited component of the disability lifeline program. Persons placed in the expedited component of the program may, if otherwise eligible, receive disability lifeline benefits pending application for federal supplemental security income benefits. The monetary value of any disability lifeline benefit that is subsequently duplicated by the person's receipt of supplemental security income for the same period shall be considered a debt due the state and shall by operation of law be subject to recovery through all available legal remedies.

(f) For purposes of determining whether a person is incapacitated from gainful employment under (a) of this subsection:

(i) The department shall adopt by rule medical criteria for disability lifeline incapacity determinations to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information; and

(ii) The process implementing the medical criteria shall involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.

(g) Persons receiving disability lifeline benefits based upon a finding of incapacity from gainful employment who remain otherwise eligible shall have their benefits discontinued unless the recipient demonstrates no material improvement in their medical or mental health condition. The department may discontinue benefits when there was specific error in the prior determination that found the person eligible by reason of incapacitation.

(h)(i) Beginning September 1, 2010, no person who is currently receiving or becomes eligible for disability lifeline program benefits shall be eligible to receive benefits under the program for more than twenty-four months in a sixty-month period. For purposes of this subsection, months of receipt of general assistance-unemployable benefits count toward the twenty-four month limit. Months during which a person received benefits under the expedited component of the disability lifeline or general assistance program or under the aged, blind, or disabled component of the disability lifeline or general assistance program shall not be included when determining whether a person has been receiving benefits for more than twenty-four months. On or before July 1, 2010,

the department must review the cases of all persons who have received disability lifeline benefits or general assistance unemployable benefits for at least twenty months as of that date. On or before September 1, 2010, the department must review the cases of all remaining persons who have received disability lifeline benefits for at least twelve months as of that date. The review should determine whether the person meets the federal supplemental security income disability standard and, if the person does not meet that standard, whether the receipt of additional services could lead to employability. If a need for additional services is identified, the department shall provide case management services, such as assistance with arranging transportation or locating stable housing, that will facilitate the person's access to needed services. A person may not be determined ineligible due to exceeding the time limit unless he or she has received a case review under this subsection finding that the person does not meet the federal supplemental security income disability standard.

(ii) The time limits established under this subsection expire June 30, 2013.

(i) No person may be considered an eligible individual for disability lifeline benefits with respect to any month if during that month the person:

(i) Is fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or

(ii) Is violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction.

(8) "Federal aid assistance"—The specific categories of assistance for which provision is made in any federal law existing or hereafter passed by which payments are made from the federal government to the state in aid or in respect to payment by the state for public assistance rendered to any category of needy persons for which provision for federal funds or aid may from time to time be made, or a federally administered needs-based program.

(9) "Income"—(a) All appreciable gains in real or personal property (cash or kind) or other assets, which are received by or become available for use and enjoyment by an applicant or recipient during the month of application or after applying for or receiving public assistance. The department may by rule and regulation exempt income received by an applicant for or recipient of public assistance which can be used by him or her to decrease his or her need for public assistance or to aid in rehabilitating him or her or his or her dependents, but such exemption shall not, unless otherwise provided in this title, exceed the exemptions of resources granted under this chapter to an applicant for public assistance. In addition, for cash assistance the department may disregard income pursuant to RCW 74.08A.230 and 74.12.350.

(b) If, under applicable federal requirements, the state has the option of considering property in the form of lump sum compensatory awards or related settlements received by an applicant or recipient as income or as a resource, the department shall consider such property to be a resource.

(10) "Need"—The difference between the applicant's or recipient's standards of assistance for himself or herself and the dependent members of his or her family, as measured by

the standards of the department, and value of all nonexempt resources and nonexempt income received by or available to the applicant or recipient and the dependent members of his or her family.

(11) "Public assistance" or "assistance"—Public aid to persons in need thereof for any cause, including services, medical care, assistance grants, disbursing orders, work relief, disability lifeline benefits and federal aid assistance.

(12) "Recipient"—Any person receiving assistance and in addition those dependents whose needs are included in the recipient's assistance.

(13) "Resource"—Any asset, tangible or intangible, owned by or available to the applicant at the time of application, which can be applied toward meeting the applicant's need, either directly or by conversion into money or its equivalent. The department may by rule designate resources that an applicant may retain and not be ineligible for public assistance because of such resources. Exempt resources shall include, but are not limited to:

(a) A home that an applicant, recipient, or their dependents is living in, including the surrounding property;

(b) Household furnishings and personal effects;

(c) A motor vehicle, other than a motor home, used and useful having an equity value not to exceed five thousand dollars;

(d) A motor vehicle necessary to transport a household member with a physical disability. This exclusion is limited to one vehicle per person with a physical disability;

(e) All other resources, including any excess of values exempted, not to exceed one thousand dollars or other limit as set by the department, to be consistent with limitations on resources and exemptions necessary for federal aid assistance. The department shall also allow recipients of temporary assistance for needy families to exempt savings accounts with combined balances of up to an additional three thousand dollars;

(f) Applicants for or recipients of disability lifeline benefits shall have their eligibility based on resource limitations consistent with the temporary assistance for needy families program rules adopted by the department; and

(g) If an applicant for or recipient of public assistance possesses property and belongings in excess of the ceiling value, such value shall be used in determining the need of the applicant or recipient, except that: (i) The department may exempt resources or income when the income and resources are determined necessary to the applicant's or recipient's restoration to independence, to decrease the need for public assistance, or to aid in rehabilitating the applicant or recipient or a dependent of the applicant or recipient; and (ii) the department may provide grant assistance for a period not to exceed nine months from the date the agreement is signed pursuant to this section to persons who are otherwise ineligible because of excess real property owned by such persons when they are making a good faith effort to dispose of that property: PROVIDED, That:

(A) The applicant or recipient signs an agreement to repay the lesser of the amount of aid received or the net proceeds of such sale;

(B) If the owner of the excess property ceases to make good faith efforts to sell the property, the entire amount of

assistance may become an overpayment and a debt due the state and may be recovered pursuant to RCW 43.20B.630;

(C) Applicants and recipients are advised of their right to a fair hearing and afforded the opportunity to challenge a decision that good faith efforts to sell have ceased, prior to assessment of an overpayment under this section; and

(D) At the time assistance is authorized, the department files a lien without a sum certain on the specific property.

(14) "Secretary" means the secretary of social and health services.

(15) "Standards of assistance"—The level of income required by an applicant or recipient to maintain a level of living specified by the department.

(16) For purposes of determining eligibility for public assistance and participation levels in the cost of medical care, the department shall exempt restitution payments made to people of Japanese and Aleut ancestry pursuant to the Civil Liberties Act of 1988 and the Aleutian and Pribilof Island Restitution Act passed by congress, P.L. 100-383, including all income and resources derived therefrom.

(17) In the construction of words and phrases used in this title, the singular number shall include the plural, the masculine gender shall include both the feminine and neuter genders and the present tense shall include the past and future tenses, unless the context thereof shall clearly indicate to the contrary. [2011 1st sp.s. c 15 § 61; 2010 1st sp.s. c 8 § 4; 2003 1st sp.s. c 10 § 1; 2000 c 218 § 1. Prior: 1998 c 80 § 1; 1998 c 79 § 6; prior: 1997 c 59 § 10; 1997 c 58 § 309; prior: 1992 c 165 § 1; 1992 c 136 § 1; 1991 sp.s. c 10 § 1; 1991 c 126 § 1; 1990 c 285 § 2; 1989 1st ex.s. c 9 § 816; prior: 1987 c 406 § 9; 1987 c 75 § 31; 1985 c 335 § 2; 1983 1st ex.s. c 41 § 36; 1981 2nd ex.s. c 10 § 5; 1981 1st ex.s. c 6 § 1; prior: 1981 c 8 § 1; prior: 1980 c 174 § 1; 1980 c 84 § 1; 1979 c 141 § 294; 1969 ex.s. c 173 § 1; 1965 ex.s. c 2 § 1; 1963 c 228 § 1; 1961 c 235 § 1; 1959 c 26 § 74.04.005; prior: (i) 1947 c 289 § 1; 1939 c 216 § 1; Rem. Supp. 1947 § 10007-101a. (ii) 1957 c 63 § 1; 1953 c 174 § 17; 1951 c 122 § 1; 1951 c 1 § 3 (Initiative Measure No. 178, approved November 7, 1950); 1949 c 6 § 3; Rem. Supp. 1949 § 9998-33c.]

Reviser's note: *(1) RCW 43.330.175 was repealed by 2011 1st sp.s. c 36 § 34.

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: See note following RCW 74.04.225.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Findings—Purpose—1990 c 285: "(1) The legislature finds that each year less than five percent of pregnant teens relinquish their babies for adoption in Washington state. Nationally, fewer than eight percent of pregnant teens relinquish their babies for adoption.

(2) The legislature further finds that barriers such as lack of information about adoption, inability to voluntarily enter into adoption agreements, and current state public assistance policies act as disincentives to adoption.

(3) It is the purpose of this act to support adoption as an option for women with unintended pregnancies by removing barriers that act as disincentives to adoption." [1990 c 285 § 1.]

Consolidated standards of need: RCW 74.04.770.

Additional notes found at www.leg.wa.gov

74.04.005 Definitions—Eligibility. (*Effective November 1, 2011.*) For the purposes of this title, unless the context indicates otherwise, the following definitions shall apply:

(1) "Aged, blind, or disabled assistance program" means the program established under RCW 74.62.030.

(2) "Applicant" means any person who has made a request, or on behalf of whom a request has been made, to any county or local office for assistance.

(3) "Authority" means the health care authority.

(4) "County or local office" means the administrative office for one or more counties or designated service areas.

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

(6) "Director" means the director of the health care authority.

(7) "Essential needs and housing support program" means the program established in RCW 43.185C.220.

(8) "Federal aid assistance" means the specific categories of assistance for which provision is made in any federal law existing or hereafter passed by which payments are made from the federal government to the state in aid or in respect to payment by the state for public assistance rendered to any category of needy persons for which provision for federal funds or aid may from time to time be made, or a federally administered needs-based program.

(9) "Income" means:

(a) All appreciable gains in real or personal property (cash or kind) or other assets, which are received by or become available for use and enjoyment by an applicant or recipient during the month of application or after applying for or receiving public assistance. The department may by rule and regulation exempt income received by an applicant for or recipient of public assistance which can be used by him or her to decrease his or her need for public assistance or to aid in rehabilitating him or her or his or her dependents, but such exemption shall not, unless otherwise provided in this title, exceed the exemptions of resources granted under this chapter to an applicant for public assistance. In addition, for cash assistance the department may disregard income pursuant to RCW 74.08A.230 and 74.12.350.

(b) If, under applicable federal requirements, the state has the option of considering property in the form of lump sum compensatory awards or related settlements received by an applicant or recipient as income or as a resource, the department shall consider such property to be a resource.

(10) "Need" means the difference between the applicant's or recipient's standards of assistance for himself or herself and the dependent members of his or her family, as measured by the standards of the department, and value of all nonexempt resources and nonexempt income received by or available to the applicant or recipient and the dependent members of his or her family.

(11) "Public assistance" or "assistance" means public aid to persons in need thereof for any cause, including services, medical care, assistance grants, disbursing orders, work relief, benefits under RCW 74.62.030 and 43.185C.220, and federal aid assistance.

(12) "Recipient" means any person receiving assistance and in addition those dependents whose needs are included in the recipient's assistance.

(13) "Resource" means any asset, tangible or intangible, owned by or available to the applicant at the time of application, which can be applied toward meeting the applicant's need, either directly or by conversion into money or its equivalent. The department may by rule designate resources that an applicant may retain and not be ineligible for public assistance because of such resources. Exempt resources shall include, but are not limited to:

(a) A home that an applicant, recipient, or their dependents is living in, including the surrounding property;

(b) Household furnishings and personal effects;

(c) A motor vehicle, other than a motor home, used and useful having an equity value not to exceed five thousand dollars;

(d) A motor vehicle necessary to transport a household member with a physical disability. This exclusion is limited to one vehicle per person with a physical disability;

(e) All other resources, including any excess of values exempted, not to exceed one thousand dollars or other limit as set by the department, to be consistent with limitations on resources and exemptions necessary for federal aid assistance. The department shall also allow recipients of temporary assistance for needy families to exempt savings accounts with combined balances of up to an additional three thousand dollars;

(f) Applicants for or recipients of benefits under RCW 74.62.030 and 43.185C.220 shall have their eligibility based on resource limitations consistent with the temporary assistance for needy families program rules adopted by the department; and

(g) If an applicant for or recipient of public assistance possesses property and belongings in excess of the ceiling value, such value shall be used in determining the need of the applicant or recipient, except that: (i) The department may exempt resources or income when the income and resources are determined necessary to the applicant's or recipient's restoration to independence, to decrease the need for public assistance, or to aid in rehabilitating the applicant or recipient or a dependent of the applicant or recipient; and (ii) the department may provide grant assistance for a period not to exceed nine months from the date the agreement is signed pursuant to this section to persons who are otherwise ineligible because of excess real property owned by such persons when they are making a good faith effort to dispose of that property if:

(A) The applicant or recipient signs an agreement to repay the lesser of the amount of aid received or the net proceeds of such sale;

(B) If the owner of the excess property ceases to make good faith efforts to sell the property, the entire amount of assistance may become an overpayment and a debt due the state and may be recovered pursuant to RCW 43.20B.630;

(C) Applicants and recipients are advised of their right to a fair hearing and afforded the opportunity to challenge a decision that good faith efforts to sell have ceased, prior to assessment of an overpayment under this section; and

(D) At the time assistance is authorized, the department files a lien without a sum certain on the specific property.

(14) "Secretary" means the secretary of social and health services.

(15) "Standards of assistance" means the level of income required by an applicant or recipient to maintain a level of living specified by the department.

(16) For purposes of determining eligibility for public assistance and participation levels in the cost of medical care, the department shall exempt restitution payments made to people of Japanese and Aleut ancestry pursuant to the Civil Liberties Act of 1988 and the Aleutian and Pribilof Island Restitution Act passed by congress, P.L. 100-383, including all income and resources derived therefrom.

(17) In the construction of words and phrases used in this title, the singular number shall include the plural, the masculine gender shall include both the feminine and neuter genders, and the present tense shall include the past and future tenses, unless the context thereof shall clearly indicate to the contrary. [2011 1st sp.s. c 36 § 8; 2011 1st sp.s. c 15 § 61; 2010 1st sp.s. c 8 § 4; 2003 1st sp.s. c 10 § 1; 2000 c 218 § 1. Prior: 1998 c 80 § 1; 1998 c 79 § 6; prior: 1997 c 59 § 10; 1997 c 58 § 309; prior: 1992 c 165 § 1; 1992 c 136 § 1; 1991 sp.s. c 10 § 1; 1991 c 126 § 1; 1990 c 285 § 2; 1989 1st ex.s. c 9 § 816; prior: 1987 c 406 § 9; 1987 c 75 § 31; 1985 c 335 § 2; 1983 1st ex.s. c 41 § 36; 1981 2nd ex.s. c 10 § 5; 1981 1st ex.s. c 6 § 1; prior: 1981 c 8 § 1; prior: 1980 c 174 § 1; 1980 c 84 § 1; 1979 c 141 § 294; 1969 ex.s. c 173 § 1; 1965 ex.s. c 2 § 1; 1963 c 228 § 1; 1961 c 235 § 1; 1959 c 26 § 74.04.005; prior: (i) 1947 c 289 § 1; 1939 c 216 § 1; Rem. Supp. 1947 § 10007-101a. (ii) 1957 c 63 § 1; 1953 c 174 § 17; 1951 c 122 § 1; 1951 c 1 § 3 (Initiative Measure No. 178, approved November 7, 1950); 1949 c 6 § 3; Rem. Supp. 1949 § 9998-33c.]

Reviser's note: This section was amended by 2011 1st sp.s. c 15 § 61 and by 2011 1st sp.s. c 36 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 36 § 8: "Section 8 of this act takes effect November 1, 2011." [2011 1st sp.s. c 36 § 40.]

Alphabetization—2011 1st sp.s. c 36: "The code reviser shall alphabetize the subsections containing definitions in RCW 74.04.005." [2011 1st sp.s. c 36 § 35.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: See note following RCW 74.04.225.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Findings—Purpose—1990 c 285: "(1) The legislature finds that each year less than five percent of pregnant teens relinquish their babies for adoption in Washington state. Nationally, fewer than eight percent of pregnant teens relinquish their babies for adoption.

(2) The legislature further finds that barriers such as lack of information about adoption, inability to voluntarily enter into adoption agreements, and current state public assistance policies act as disincentives to adoption.

(3) It is the purpose of this act to support adoption as an option for women with unintended pregnancies by removing barriers that act as disincentives to adoption." [1990 c 285 § 1.]

Consolidated standards of need: RCW 74.04.770.

Additional notes found at www.leg.wa.gov

74.04.0052 Teen applicants' living situation—Criteria—Presumption—Protective payee—Adoption referral. (1) The department shall determine, after consideration of all relevant factors and in consultation with the applicant,

the most appropriate living situation for applicants under eighteen years of age, unmarried, and pregnant who are eligible for benefits under RCW 74.62.030 and 43.185C.220. An appropriate living situation shall include a place of residence that is maintained by the applicant's parents, parent, legal guardian, or other adult relative as their or his or her own home and that the department finds would provide an appropriate supportive living arrangement. It also includes a living situation maintained by an agency that is licensed under chapter 74.15 RCW that the department finds would provide an appropriate supportive living arrangement. Grant assistance shall not be provided under this chapter if the applicant does not reside in the most appropriate living situation, as determined by the department.

(2) A pregnant minor residing in the most appropriate living situation, as provided under subsection (1) of this section, is presumed to be unable to manage adequately the funds paid to the minor or on behalf of the dependent child or children and, unless the minor provides sufficient evidence to rebut the presumption, shall be subject to the protective payee requirements provided for under RCW 74.12.250 and 74.08.280.

(3) The department shall consider any statements or opinions by either parent of the unmarried minor parent or pregnant minor applicant as to an appropriate living situation for the minor, whether in the parental home or other situation. If the parents or a parent of the minor request, they or he or she shall be entitled to a hearing in juvenile court regarding designation of the parental home or other relative placement as the most appropriate living situation for the pregnant or parenting minor.

The department shall provide the parents or parent with the opportunity to make a showing that the parental home, or home of the other relative placement, is the most appropriate living situation. It shall be presumed in any administrative or judicial proceeding conducted under this subsection that the parental home or other relative placement requested by the parents or parent is the most appropriate living situation. This presumption is rebuttable.

(4) In cases in which the minor is unmarried and unemployed, the department shall, as part of the determination of the appropriate living situation, provide information about adoption including referral to community-based organizations providing counseling.

(5) For the purposes of this section, "most appropriate living situation" shall not include a living situation including an adult male who fathered the qualifying child and is found to meet the elements of rape of a child as set forth in RCW 9A.44.079. [2011 1st sp.s. c 36 § 18; 2010 1st sp.s. c 8 § 18; 1997 c 58 § 502; 1994 c 299 § 34.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

Aid to families with dependent children: RCW 74.12.255.

Additional notes found at www.leg.wa.gov

74.04.012 Office of fraud and accountability. (1) There is established an office of fraud and accountability within the department for the purpose of detection, investigation, and prosecution of any act prohibited or declared to be unlawful in the public assistance programs administered by the department. The secretary will employ qualified supervisory, legal, and investigative personnel for the program. Program staff must be qualified by training and experience.

(2) The director of the office of fraud and accountability is the head of the office and is selected by the secretary and must demonstrate suitable capacity and experience in law enforcement management, public administration, and criminal investigations. The director of the office of fraud and accountability shall:

(a) Report directly to the secretary; and

(b) Ensure that each citizen complaint, employee complaint, law enforcement complaint, and agency referral is assessed and, when risk of fraud or abuse is present, is fully investigated, and is referred for prosecution or recovery when there is substantial evidence of wrongdoing.

(3) The office shall:

(a) Conduct independent and objective investigations into allegations of fraud and abuse, make appropriate referral to law enforcement when there is substantial evidence of criminal activity, and recover overpayment whenever possible and to the greatest possible degree;

(b) Recommend policies, procedures, and best practices designed to detect and prevent fraud and abuse, and to mitigate the risk for fraud and abuse and assure that public assistance benefits are being used for their statutorily stated goals;

(c) Analyze cost-effective, best practice alternatives to the current cash benefit delivery system consistent with federal law to ensure that benefits are being used for their intended purposes; and

(d) Use best practices to determine appropriate utilization and deployment of investigative resources, ensure that resources are deployed in a balanced and effective manner, and use all available methods to gather evidence necessary for proper investigation and successful prosecution.

(4) By December 31, 2011, the office shall report to the legislature on the development of the office, identification of any barriers to meeting the stated goals of the office, and recommendations for improvements to the system and laws related to the prevention, detection, and prosecution of fraud and abuse in public assistance programs. [2011 1st sp.s. c 42 § 22; 2008 c 74 § 3.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Finding—2008 c 74: See note following RCW 51.04.024.

74.04.014 Office of fraud and accountability—Authority—Confidentiality. (1) In carrying out the provisions of this chapter, the office of fraud and accountability shall have prompt access to all individuals, records, electronic data, reports, audits, reviews, documents, and other materials available to the department of revenue, department of labor and industries, department of early learning, employment security department, department of licensing, and any other government entity that can be used to help facilitate

investigations of fraud or abuse as determined necessary by the director of the office of fraud and accountability.

(2) Information gathered by the department, the office, or the fraud ombudsman shall be safeguarded and remain confidential as required by applicable state or federal law. Whenever information or assistance requested under subsection (1) of this section is, in the judgment of the director, unreasonably refused or not provided, the director of the office of fraud and accountability must report the circumstances to the secretary immediately. [2011 1st sp.s. c 42 § 24.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

74.04.015 Administration and disbursement of federal funds—Public assistance—Medical services programs. (1) The secretary of social and health services shall be the responsible state officer for the administration and disbursement of all funds, goods, commodities, and services, which may be received by the state in connection with programs of public assistance or services related directly or indirectly to assistance programs, and all other matters included in the federal social security act as amended, or any other federal act or as the same may be amended except as otherwise provided by law.

(2) The director shall be the responsible state officer for the administration and disbursement of funds that the state receives in connection with the medical services programs established under chapter 74.09 RCW, including the state children's health insurance program, Titles XIX and XXI of the social security act of 1935, as amended.

(3) The department and the authority, as appropriate, shall make such reports and render such accounting as may be required by federal law. [2011 1st sp.s. c 15 § 62; 1981 1st ex.s. c 6 § 2; 1981 c 8 § 2; 1979 c 141 § 296; 1963 c 228 § 2; 1959 c 26 § 74.04.015. Prior: 1953 c 174 § 49; 1937 c 111 § 12; RRS § 10785-11.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Center for research and training in intellectual and developmental disabilities, assistant secretaries as advisory committee members: RCW 28B.20.412.

Additional notes found at www.leg.wa.gov

74.04.025 Bilingual services for non-English speaking applicants and recipients—Bilingual personnel, when—Primary language pamphlets and written materials. (1) The department, the authority, and the office of administrative hearings shall ensure that bilingual services are provided to non-English speaking applicants and recipients. The services shall be provided to the extent necessary to assure that non-English speaking persons are not denied, or unable to obtain or maintain, services or benefits because of their inability to speak English.

(2) If the number of non-English speaking applicants or recipients sharing the same language served by any community service office client contact job classification equals or exceeds fifty percent of the average caseload of a full-time position in such classification, the department shall, through

attrition, employ bilingual personnel to serve such applicants or recipients.

(3) Regardless of the applicant or recipient caseload of any community service office, each community service office shall ensure that bilingual services required to supplement the community service office staff are provided through contracts with language access providers, local agencies, or other community resources.

(4) The department shall certify, authorize, and qualify language access providers as needed to maintain an adequate pool of providers.

(5) The department shall require compliance with RCW 41.56.113(2) through its contracts with third parties.

(6) Initial client contact materials shall inform clients in all primary languages of the availability of interpretation services for non-English speaking persons. Basic informational pamphlets shall be translated into all primary languages.

(7) To the extent all written communications directed to applicants or recipients are not in the primary language of the applicant or recipient, the department and the office of administrative hearings shall include with the written communication a notice in all primary languages of applicants or recipients describing the significance of the communication and specifically how the applicants or recipients may receive assistance in understanding, and responding to if necessary, the written communication. The department shall assure that sufficient resources are available to assist applicants and recipients in a timely fashion with understanding, responding to, and complying with the requirements of all such written communications.

(8) As used in this section:

(a) "Language access provider" means any independent contractor who provides spoken language interpreter services for department appointments or medicaid enrollee appointments, or provided these services on or after January 1, 2009, and before June 10, 2010, whether paid by a broker, language access agency, or the department. "Language access provider" does not mean an owner, manager, or employee of a broker or a language access agency.

(b) "Primary languages" includes but is not limited to Spanish, Vietnamese, Cambodian, Laotian, and Chinese. [2011 1st sp.s. c 15 § 63; 2010 c 296 § 7; 1998 c 245 § 143; 1983 1st ex.s. c 41 § 33.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Conflict with federal requirements—2010 c 296: See note following RCW 41.56.510.

Additional notes found at www.leg.wa.gov

74.04.050 Department to administer certain public assistance programs—Authority to administer medical services programs. (1) The department is designated as the single state agency to administer the following public assistance programs:

(a) Temporary assistance to needy families;

(b) Child welfare services; and

(c) Any other programs of public assistance for which provision for federal grants or funds may from time to time be made, except as otherwise provided by law.

[2011 RCW Supp—page 1436]

(2) The authority is hereby designated as the single state agency to administer the medical services programs established under chapter 74.09 RCW, including the state children's health insurance program, Titles XIX and XXI of the federal social security act of 1935, as amended.

(3) The department and the authority are hereby empowered and authorized to cooperate in the administration of such federal laws, consistent with the public assistance laws of this state, as may be necessary to qualify for federal funds.

(4) The state hereby accepts and assents to all the present provisions of the federal law under which federal grants or funds, goods, commodities, and services are extended to the state for the support of programs referenced in this section, and to such additional legislation as may subsequently be enacted as is not inconsistent with the purposes of this title, authorizing public welfare and assistance activities. The provisions of this title shall be so administered as to conform with federal requirements with respect to eligibility for the receipt of federal grants or funds.

(5) The department and the authority shall periodically make application for federal grants or funds and submit such plans, reports and data, as are required by any act of congress as a condition precedent to the receipt of federal funds for such assistance. The department and the authority shall make and enforce such rules and regulations as shall be necessary to insure compliance with the terms and conditions of such federal grants or funds. [2011 1st sp.s. c 15 § 64; 1981 1st ex.s. c 6 § 3; 1981 c 8 § 3; 1963 c 228 § 3; 1959 c 26 § 74.04.050. Prior: 1955 c 273 § 21; 1953 c 174 § 6; 1939 c 216 § 6; RRS § 10007-106a.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

74.04.055 Cooperation with federal government—Construction—Conflict with federal requirements. In furtherance of the policy of this state to cooperate with the federal government in the programs included in this title the secretary or director, as appropriate, shall issue such rules and regulations as may become necessary to entitle this state to participate in federal grants-in-aid, goods, commodities and services unless the same be expressly prohibited by this title. Any section or provision of this title which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal matching or other funds for the various programs of public assistance. If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the receipts of federal funds to the state, the conflicting part of this chapter is hereby inoperative solely to the extent of the conflict with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter. [2011 1st sp.s. c 15 § 65; 1991 c 126 § 2; 1979 c 141 § 298; 1963 c 228 § 4; 1959 c 26 § 74.04.055. Prior: 1953 c 174 § 50.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.04.060 Records, confidential—Exceptions—Penalty. (1)(a) For the protection of applicants and recipients, the department, the authority, and the county offices and their respective officers and employees are prohibited, except as hereinafter provided, from disclosing the contents of any records, files, papers and communications, except for purposes directly connected with the administration of the programs of this title. In any judicial proceeding, except such proceeding as is directly concerned with the administration of these programs, such records, files, papers and communications, and their contents, shall be deemed privileged communications and except for the right of any individual to inquire of the office whether a named individual is a recipient of welfare assistance and such person shall be entitled to an affirmative or negative answer.

(b) Upon written request of a parent who has been awarded visitation rights in an action for divorce or separation or any parent with legal custody of the child, the department shall disclose to him or her the last known address and location of his or her natural or adopted children. The secretary shall adopt rules which establish procedures for disclosing the address of the children and providing, when appropriate, for prior notice to the custodian of the children. The notice shall state that a request for disclosure has been received and will be complied with by the department unless the department receives a copy of a court order which enjoins the disclosure of the information or restricts or limits the requesting party's right to contact or visit the other party or the child. Information supplied to a parent by the department shall be used only for purposes directly related to the enforcement of the visitation and custody provisions of the court order of separation or decree of divorce. No parent shall disclose such information to any other person except for the purpose of enforcing visitation provisions of the said order or decree.

(c) The department shall review methods to improve the protection and confidentiality of information for recipients of welfare assistance who have disclosed to the department that they are past or current victims of domestic violence or stalking.

(2) The county offices shall maintain monthly at their offices a report showing the names and addresses of all recipients in the county receiving public assistance under this title, together with the amount paid to each during the preceding month.

(3) The provisions of this section shall not apply to duly designated representatives of approved private welfare agencies, public officials, members of legislative interim committees and advisory committees when performing duties directly connected with the administration of this title, such as regulation and investigation directly connected therewith: PROVIDED, HOWEVER, That any information so obtained by such persons or groups shall be treated with such degree of confidentiality as is required by the federal social security law.

(4) It shall be unlawful, except as provided in this section, for any person, body, association, firm, corporation or other agency to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists or names for commercial or political purposes of any nature. The violation of this section shall

be a gross misdemeanor. [2011 1st sp.s. c 15 § 66; 2006 c 259 § 5; 1987 c 435 § 29; 1983 1st ex.s. c 41 § 32; 1973 c 152 § 1; 1959 c 26 § 74.04.060. Prior: 1953 c 174 § 7; 1950 ex.s. c 10 § 1; 1941 c 128 § 5; Rem. Supp. 1941 § 10007-106b.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Child support, department may disclose information to internal revenue department: RCW 74.20.160.

Additional notes found at www.leg.wa.gov

74.04.062 Disclosure of recipient location to police officer or immigration official. Upon written request of a person who has been properly identified as an officer of the law or a properly identified United States immigration official the department or authority shall disclose to such officer the current address and location of a recipient of public welfare if the officer furnishes the department or authority with such person's name and social security account number and satisfactorily demonstrates that such recipient is a fugitive, that the location or apprehension of such fugitive is within the officer's official duties, and that the request is made in the proper exercise of those duties.

When the department or authority becomes aware that a public assistance recipient is the subject of an outstanding warrant, the department or authority may contact the appropriate law enforcement agency and, if the warrant is valid, provide the law enforcement agency with the location of the recipient. [2011 1st sp.s. c 15 § 67; 1997 c 58 § 1006; 1973 c 152 § 2.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

74.04.120 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.04.225 Opportunity portal—Access to available services facilitated—Report to legislature and governor.

(1) An online opportunity portal shall be established to provide the public with more effective access to available state, federal, and local services. The secretary of the department of social and health services shall act as the executive branch sponsor of the portal planning process. Under the leadership of the secretary, the department shall:

(a) Identify and select an appropriate solution and acquisition approach to integrate technology systems to create a user-friendly electronic tool for Washington residents to apply for benefits;

(b) Facilitate the adaptation of state information technology systems to allow applications generated through the opportunity portal and other compatible electronic application systems to seamlessly link to appropriate state information systems;

(c) Ensure that the portal provides access to a broad array of state, federal, and local services, including but not limited to: Health care services, higher education financial aid, tax credits, civic engagement, nutrition assistance, energy assistance, family support, and the programs under RCW 74.62.030 and 43.185C.220 and as defined in RCW

10.101.010, 13.34.030, 70.96A.530, 74.04.005, 74.04.652, 74.04.655, 74.04.657, and 74.62.005 through 74.62.030;

(d) Design an implementation strategy for the portal that maximizes collaboration with community-based organizations to facilitate its use by low-income individuals and families;

(e) Provide access to the portal at a wide array of locations including but not limited to: Community or technical colleges, community college campuses where community service offices are colocated, community-based organizations, libraries, churches, food banks, state agencies, early childhood education sites, and labor unions;

(f) Ensure project resources maximize available federal and private funds for development and initial operation of the opportunity portal. Any incidental costs to state agencies shall be derived from existing resources. This subsection does not obligate or preclude the appropriation of future state funding for the opportunity portal;

(g) Determine the solution and acquisition approach by June 1, 2010.

(2) By December 1, 2011, and annually thereafter, the department of social and health services shall report to the legislature and governor. The report shall include data and information on implementation and outcomes of the opportunity portal, including any increases in the use of public benefits and increases in federal funding.

(3) The department shall develop a plan for implementing paperless application processes for the services included in the opportunity portal for which the electronic exchange of application information is possible. The plan should include a goal of achieving, to the extent possible, the transition of these services to paperless application processes by July 1, 2012. The plan must comply with federal statutes and regulations and must allow applicants to submit applications by alternative means to ensure that access to benefits will not be restricted.

(4) To the extent that the department enters into a contractual relationship to accomplish the purposes of this section, such contract or contracts shall be performance-based. [2011 1st sp.s. c 36 § 19; 2010 1st sp.s. c 8 § 2.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Contingent validity—2010 1st sp.s. c 8 § 2: "If private funding sufficient to implement and operate the portal authorized under section 2 of this act is not secured by December 31, 2010, section 2 of this act is null and void." [2010 1st sp.s. c 8 § 36.]

***Reviser's note:** The code reviser's office was informed by the department of social and health services that funding was secured to implement this section.

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: "Sections 1 through 10 and 29 of this act shall be implemented within the amounts appropriated specifically for these purposes in the omnibus operating appropriations act." [2010 1st sp.s. c 8 § 37.]

Findings—Intent—2010 1st sp.s. c 8: "(1) The legislature finds that:

(a) Low-income families and individuals often face significant barriers to receiving the services and benefits that they are qualified to receive. These services are essential to meeting individuals' basic needs, and provide critical support to low-income individuals who are working or who have disabilities that prevent them from working;

(b) Each year millions of federal dollars go unclaimed due to underutilization of benefits such as tax credits, health care coverage, and food support;

(c) State agencies have been engaged in an effort to implement an

online benefit portal to simplify and streamline access to state, federal, and local benefits that include a broad array of public benefits;

(d) Access to education and training gives low-income individuals and families the opportunity to acquire the skills they need to become successfully employed and attain self-sufficiency; and

(e) Agencies have been engaged in efforts to increase access to training and education for recipients of federal food assistance.

(2) The legislature therefore intends to strengthen existing efforts by providing enhanced structure and direction to ensure that a strong partnership among colleges, state agencies, community partners, and philanthropy be established. The legislature also intends to provide an efficient, effective, integrated approach to the delivery of basic support services and education and training programs. The integrated approach should include the creation of a one-stop-shop, online benefits portal where individuals can apply for a broad array of services, including public benefits and education and training support, and the expansion of the food stamp employment and training program.

(3) The legislature further finds that:

(a) The general assistance program can be reformed to better support the ability of persons who are unable to work due to physical or mental health impairments to either return to work, or transition to federal supplemental security income benefits; and

(b) Persons who are homeless and suffering from mental illness or chemical dependency are particularly vulnerable, because homelessness is a substantial barrier to successful participation in, and completion of, needed treatment services.

(4) Through the reforms included in this act, the legislature intends to end the general assistance program and establish the disability lifeline program, and to implement multiple strategies designed to improve the employment and basic support outcomes of persons receiving disability lifeline benefits. The legislature further intends to focus services on persons who are homeless and have a mental illness or chemical dependency by providing housing vouchers as an alternative to a cash grant so that these persons can be in stable housing and thus have a greater opportunity to succeed in treatment." [2010 1st sp.s. c 8 § 1.]

Short title—2010 1st sp.s. c 8: "This act shall be known and cited as the security lifeline act." [2010 1st sp.s. c 8 § 33.]

Effective date—2010 1st sp.s. c 8: "Except for section 10 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 29, 2010]." [2010 1st sp.s. c 8 § 34.]

74.04.230 Medical care services benefits—Mental health services. Persons eligible for medical care services benefits are eligible for mental health services to the extent that they meet the client definitions and priorities established by chapter 71.24 RCW. [2011 1st sp.s. c 36 § 20; 2010 1st sp.s. c 8 § 20; 1982 c 204 § 16.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Clients to be charged for mental health services: RCW 71.24.215.

74.04.266 Aged, blind, or disabled assistance—Medical care services—Earned income exemption to be established for unemployable persons. In determining need for aged, blind, or disabled assistance, and medical care services, the department may by rule and regulation establish a monthly earned income exemption in an amount not to exceed the exemption allowable under disability programs authorized in Title XVI of the federal social security act. [2011 1st sp.s. c 36 § 21; 2010 1st sp.s. c 8 § 21; 1977 ex.s. c 215 § 1.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

74.04.270 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.04.290 Subpoena of witnesses, books, records, etc.

In carrying out any of the provisions of this title, the secretary, the director, county administrators, hearing examiners, or other duly authorized officers of the department or authority shall have power to subpoena witnesses, administer oaths, take testimony and compel the production of such papers, books, records and documents as they may deem relevant to the performance of their duties. Subpoenas issued under this power shall be under RCW 43.20A.605. [2011 1st sp.s. c 15 § 68; 1983 1st ex.s. c 41 § 22; 1979 ex.s. c 171 § 2; 1979 c 141 § 305; 1969 ex.s. c 173 § 2; 1959 c 26 § 74.04.290. Prior: 1939 c 216 § 26; RRS § 10007-126a.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

74.04.620 State supplement to national program of supplemental security income—Authorized—Reimbursement of interim assistance, attorneys' fees.

(1) The department is authorized to establish a program of state supplementation to the national program of supplemental security income consistent with Public Law 92-603 and Public Law 93-66 to those persons who are in need thereof in accordance with eligibility requirements established by the department.

(2) The department is authorized to establish reasonable standards of assistance and resource and income exemptions specifically for such program of state supplementation which shall be consistent with the provisions of the Social Security Act.

(3) The department is authorized to make payments to applicants for supplemental security income, pursuant to agreements as provided in Public Law 93-368, who are otherwise eligible for aged, blind, or disabled assistance.

(4) Any agreement between the department and a supplemental security income applicant providing for the reimbursement of interim assistance to the department shall provide, if the applicant has been represented by an attorney, that twenty-five percent of the reimbursement received shall be withheld by the department and all or such portion thereof as has been approved as a fee by the United States department of health and human services shall be released directly to the applicant's attorney. The secretary may maintain such records as are deemed appropriate to measure the cost and effectiveness of such agreements and may make recommendations concerning the continued use of such agreements to the legislature. [2011 1st sp.s. c 36 § 22; 2010 1st sp.s. c 8 § 22; 1983 1st ex.s. c 41 § 37; 1981 1st ex.s. c 6 § 7; 1981 c 8 § 6; 1973 2nd ex.s. c 10 § 3.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Additional notes found at www.leg.wa.gov

74.04.652 Early supplemental security income transition project—Implementation—Contracts—Report.

(1) To ensure that persons who are likely eligible for supplemental security income benefits are transitioned from the medical care services program to the aged, blind, or disabled assistance program, and the medicaid program, and then to the supplemental security income program as quickly as practicable, the department shall implement the early supplemental security income transition project starting in King, Pierce, and Spokane counties no later than July 1, 2010, and extending statewide no later than October 1, 2011. The program shall be implemented through performance-based contracts with managed health care systems providing medical care services under RCW 74.09.035 or other qualified entities. The participants shall have the following responsibilities and duties under this program:

(a) The entities with whom the department contracts to provide the program shall be responsible for:

(i) Systematically screening persons receiving benefits under RCW 74.09.035 at the point of eligibility determination or shortly thereafter to determine if the persons should be referred for medical or behavioral health evaluations to determine whether they are likely eligible for supplemental security income;

(ii) Immediately sharing the results of the disability screening with the department;

(iii) Managing medical care services and aged, blind, or disabled assistance incapacity evaluation examinations to provide timely access to needed medical and behavioral health evaluations and standardizing health care providers' conduct of incapacity evaluations. To maximize the timeliness and efficiency of incapacity evaluation examinations, the department must strongly consider contracting with a managed health care system with a network of health care providers that are trained and have agreed to conduct aged, blind, or disabled medical and psychological incapacity and recertification exams. The department may obtain medical evidence and other relevant information from sources other than the contracted entity if such evidence is available at the time of a person's application for aged, blind, or disabled benefits and is sufficient to support a determination that the person is incapacitated;

(iv) Maintaining a centralized appointment and clinical data system; and

(v) Assisting persons receiving medical care services benefits, except recipients of alcohol and addiction treatment under chapter 74.50 RCW, with obtaining additional medical or behavioral health examinations needed to meet the disability standard for federal supplemental security income benefits and with submission of applications for supplemental security income benefits.

(b) The department shall be responsible for:

(i) Determining incapacity and eligibility for benefits under RCW 74.62.030 and 43.185C.220;

(ii) Making timely determinations that a person receiving medical care services benefits, except recipients of alcohol and addiction treatment under chapter 74.50 RCW, is

likely eligible for supplemental security income based on medical evidence and other relevant information provided by a contracted entity, and immediately referring such persons to a contracted entity for services;

(iii) Developing standardized procedures for sharing data and information with the contracted entities to ensure timely identification of clients who have not been transferred to the aged, blind, or disabled assistance program within four months of their date of application, but who may, upon further review, be appropriately transferred to that program;

(iv) Providing case management, in partnership with the managed health care system or contracted entity, to support persons' transition to federal supplemental security income and medicaid benefits; and

(v) Identifying a savings determination methodology, in consultation with the contracted entities, the office of financial management, and the legislature, on or before implementation of the project.

(2) Early supplemental security income transition project contracts shall include the following performance goals:

(a) Persons receiving medical care services benefits, except recipients of alcohol and addiction treatment under chapter 74.50 RCW, should be screened within thirty days of entering the program to determine the propriety of their transfer to the aged, blind, or disabled assistance program; and

(b) Seventy-five percent of persons receiving medical care services benefits, except recipients of alcohol and addiction treatment under chapter 74.50 RCW, that appear likely to qualify for supplemental security income benefits shall be transferred to the aged, blind, or disabled assistance program within four months of their application for aged, blind, or disabled benefits.

(3) The initial focus of the efforts of the early supplemental security income transition project shall be on persons who have been receiving medical care services, except recipients of alcohol and addiction treatment under chapter 74.50 RCW or aged, blind, or disabled assistance, for twelve or more months.

(4) No later than December 1, 2011, the department shall report to the governor and appropriate policy and fiscal committees on whether the early supplemental security income transition project performance goals in subsection (2) of this section were met, including the reasons those goals were or were not met.

(5) Pursuant to RCW 41.06.142(3), performance-based contracting under this section is expressly mandated by the legislature and is not subject to the processes set forth in RCW 41.06.142 (1), (4), and (5).

The statewide expansion of the program under this section shall be considered expressly mandated by the legislature and not be subject to the provisions of RCW 41.06.142 (1), (4), and (5). [2011 1st sp.s. c 36 § 23; 2010 1st sp.s. c 8 § 7.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: See note following RCW 74.04.225.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

[2011 RCW Supp—page 1440]

74.04.655 Vocational rehabilitation—Assessment, referral. (1) The economic services administration shall work jointly with the division of vocational rehabilitation to develop an assessment tool that must be used to determine whether the programs offered by the division of vocational rehabilitation could assist persons receiving benefits under RCW 74.62.030 and 43.185C.220 in returning to the workforce. The assessment tool shall be completed no later than December 1, 2010. The economic services administration shall begin using the tool no later than January 1, 2011. No later than December 30, 2011, the department shall report on the use of the tool and to what extent the programs offered by the division of vocational rehabilitation have been successful in returning persons receiving aged, blind, or disabled benefits to the workforce.

(2) After January 1, 2011, all persons receiving benefits under RCW 74.62.030 and 43.185C.230 shall be assessed to determine whether they would likely benefit from a program offered by the division of vocational rehabilitation. If the assessment indicates that the person might benefit, the economic services administration shall make a referral to the division of vocational rehabilitation. If the person is found eligible for a program with the division of vocational rehabilitation, he or she must participate in that program to remain eligible for the monthly stipend and housing voucher or a cash grant. If the person refuses to participate or does not complete the program, the department shall terminate the cash stipend and housing voucher or cash grant but may not terminate medical coverage and food benefits. [2011 1st sp.s. c 36 § 24; 2010 1st sp.s. c 8 § 5.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: See note following RCW 74.04.225.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

74.04.657 Veterans' benefits—Assessment for eligibility. During the application process for benefits under RCW 74.62.030 and 43.185C.220, the department shall inquire of each applicant whether he or she has ever served in the United States military service. If the applicant answers in the affirmative, the department shall confer with a veterans benefit specialist with the Washington state department of veterans affairs or a contracted veterans service officer in the community to determine whether the applicant is eligible for any benefits or programs offered to veterans by either the state or the federal government. [2011 1st sp.s. c 36 § 25; 2010 1st sp.s. c 8 § 6.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: See note following RCW 74.04.225.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

74.04.770 Consolidated standards of need—Rateable reductions—Grant maximums. The department shall establish consolidated standards of need each fiscal year

which may vary by geographical areas, program, and family size, for temporary assistance for needy families, refugee assistance, supplemental security income, and benefits under RCW 74.62.030. Standards for temporary assistance for needy families, refugee assistance, and benefits under RCW 74.62.030 shall be based on studies of actual living costs and generally recognized inflation indices and shall include reasonable allowances for shelter, fuel, food, transportation, clothing, household maintenance and operations, personal maintenance, and necessary incidentals. The standard of need may take into account the economies of joint living arrangements, but unless explicitly required by federal statute, there shall not be proration of any portion of assistance grants unless the amount of the grant standard is equal to the standard of need.

The department is authorized to establish rateable reductions and grant maximums consistent with federal law.

Payment level will be equal to need or a lesser amount if rateable reductions or grant maximums are imposed. In no case shall a recipient of supplemental security income receive a state supplement less than the minimum required by federal law.

The department may establish a separate standard for shelter provided at no cost. [2011 1st sp.s. c 36 § 26; 2010 1st sp.s. c 8 § 23; 1997 c 59 § 11; 1983 1st ex.s. c 41 § 38; 1981 2nd ex.s. c 10 § 4.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Additional notes found at www.leg.wa.gov

74.04.810 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 74.08 RCW

ELIGIBILITY GENERALLY— STANDARDS OF ASSISTANCE

Sections

74.08.025	Eligibility for public assistance—Temporary assistance for needy families—Limitations for new residents, drug or alcohol-dependent persons.
74.08.043	Need for personal and special care—Authority to consider in determining living requirements.
74.08.278	Central operating fund established.
74.08.331	Unlawful practices—Obtaining assistance—Disposal of realty—Penalties.
74.08.335	Transfers of property to qualify for assistance.
74.08.580	Electronic benefit cards—Prohibited uses—Violations.

74.08.025 Eligibility for public assistance—Temporary assistance for needy families—Limitations for new residents, drug or alcohol-dependent persons. (1) Public assistance may be awarded to any applicant:

(a) Who is in need and otherwise meets the eligibility requirements of department assistance programs; and

(b) Who has not made a voluntary assignment of property or cash for the purpose of qualifying for an assistance grant; and

(c) Who is not an inmate of a public institution except as a patient in a medical institution or except as an inmate in a

public institution who could qualify for federal aid assistance: PROVIDED, That the assistance paid by the department to recipients in nursing homes, or receiving nursing home care, may cover the cost of clothing and incidentals and general maintenance exclusive of medical care and health services. The department may pay a grant to cover the cost of clothing and personal incidentals in public or private medical institutions and institutions for tuberculosis. The department shall allow recipients in nursing homes to retain, in addition to the grant to cover the cost of clothing and incidentals, wages received for work as a part of a training or rehabilitative program designed to prepare the recipient for less restrictive placement to the extent permitted under Title XIX of the federal social security act.

(2) Any person otherwise qualified for temporary assistance for needy families under this title who has resided in the state of Washington for fewer than twelve consecutive months immediately preceding application for assistance is limited to the benefit level in the state in which the person resided immediately before Washington, using the eligibility rules and other definitions established under this chapter, that was obtainable on the date of application in Washington state, if the benefit level of the prior state is lower than the level provided to similarly situated applicants in Washington state. The benefit level under this subsection shall be in effect for the first twelve months a recipient is on temporary assistance for needy families in Washington state.

(3) Any person otherwise qualified for temporary assistance for needy families who is assessed through the state alcohol and substance abuse program as drug or alcohol-dependent and requiring treatment to become employable shall be required by the department to participate in a drug or alcohol treatment program as a condition of benefit receipt.

(4) The department may implement a permanent disqualification for adults who have been terminated due to WorkFirst noncompliance sanction three or more times since March 1, 2007. A household that includes an adult who has been permanently disqualified from receiving temporary assistance for needy families shall be ineligible for further temporary assistance for needy families assistance.

(5) Pursuant to 21 U.S.C. 862a(d)(1), the department shall exempt individuals from the eligibility restrictions of 21 U.S.C. 862a(a)(1) and (2) to ensure eligibility for temporary assistance for needy families benefits and federal food assistance. [2011 1st sp.s. c 42 § 7; 2005 c 174 § 2; 2004 c 54 § 5; 1997 c 58 § 101; 1981 1st ex.s. c 6 § 9; 1981 c 8 § 8; 1980 c 79 § 1; 1971 ex.s. c 169 § 1; 1967 ex.s. c 31 § 1; 1959 c 26 § 74.08.025. Prior: 1953 c 174 § 19.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Findings—2005 c 174: "The legislature finds that:

(1) Too many families with children in Washington are unable to afford shelter, clothing, and other necessities of life; basic necessities that are at the core of economic security and family stability.

(2) Parents who lack resources for shelter, clothing, and transportation are less likely to obtain employment or have the ability to adequately provide for their children's physical and emotional well-being and educational success.

(3) Washington's temporary assistance for needy families helps financially struggling families find jobs, keep their jobs, get better jobs, and build a better life for their children through the WorkFirst program.

(4) Participation in the WorkFirst program through temporary assis-

tance for needy families is an important step towards self-sufficiency and decreased long-term reliance on governmental assistance.

(5) Removing this barrier to participation in temporary assistance for needy families and WorkFirst will serve to strengthen families and communities throughout the state.

(6) Preventing even one percent of these individuals from reoffending by extending economic and employment opportunities will result in law enforcement and correctional savings that substantially exceed the cost of temporary assistance for needy families and WorkFirst services." [2005 c 174 § 1.]

Effective date—2005 c 174: "This act takes effect September 1, 2005." [2005 c 174 § 3.]

Findings—Conflict with federal requirements—2004 c 54: See notes following RCW 28A.235.160.

Additional notes found at www.leg.wa.gov

74.08.043 Need for personal and special care—Authority to consider in determining living requirements. In determining the living requirements of otherwise eligible applicants and recipients of supplemental security income and benefits under RCW 74.62.030 and 43.185C.220, the department is authorized to consider the need for personal and special care and supervision due to physical and mental conditions. [2011 1st sp.s. c 36 § 27; 2010 1st sp.s. c 8 § 24; 1981 1st ex.s. c 6 § 12; 1981 c 8 § 11; 1969 ex.s. c 172 § 10.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Additional notes found at www.leg.wa.gov

74.08.278 Central operating fund established. In order to comply with federal statutes and regulations pertaining to federal matching funds and to provide for the prompt payment of initial grants and adjusting payments of grants the secretary is authorized to make provisions for the cash payment of assistance by the secretary or county administrators by the establishment of a central operating fund. The secretary may establish such a fund with the approval of the state auditor from moneys appropriated to the department for the payment of benefits under RCW 74.62.030 in a sum not to exceed one million dollars. Such funds shall be deposited as agreed upon by the secretary and the state auditor in accordance with the laws regulating the deposits of public funds. Such security shall be required of the depository in connection with the fund as the state treasurer may prescribe. Moneys remaining in the fund shall be returned to the general fund at the end of the biennium, or an accounting of proper expenditures from the fund shall be made to the state auditor. All expenditures from such central operating fund shall be reimbursed out of and charged to the proper program appropriated by the use of such forms and vouchers as are approved by the secretary of the department and the state auditor. Expenditures from such fund shall be audited by the director of financial management and the state auditor from time to time and a report shall be made by the state auditor and the secretary as are required by law. [2011 1st sp.s. c 36 § 28; 2010 1st sp.s. c 8 § 25; 1979 c 141 § 327; 1959 c 26 § 74.08.278. Prior: 1953 c 174 § 42; 1951 c 261 § 1.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

[2011 RCW Supp—page 1442]

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties. (1) Any person who by means of a willfully false statement, or representation, or impersonation, or a willful failure to reveal any material fact, condition, or circumstance affecting eligibility or need for assistance, including medical care, surplus commodities, and food stamps or food stamp benefits transferred electronically, as required by law, or a willful failure to promptly notify the county office in writing as required by law or any change in status in respect to resources, or income, or need, or family composition, money contribution and other support, from whatever source derived, including unemployment insurance, or any other change in circumstances affecting the person's eligibility or need for assistance, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain any public assistance to which the person is not entitled or greater public assistance than that to which he or she is justly entitled is guilty of theft in the first degree under RCW 9A.56.030 and upon conviction thereof shall be punished by imprisonment in a state correctional facility for not more than fifteen years.

(2) Any person who by means of a willfully false statement or representation or by impersonation or other fraudulent device aids or abets in buying, selling, or in any other way disposing of the real property of a recipient of public assistance without the consent of the secretary is guilty of a gross misdemeanor and upon conviction thereof shall be punished by imprisonment for up to three hundred sixty-four days in the county jail or a fine of not to exceed one thousand dollars or by both. [2011 c 96 § 53; 2003 c 53 § 368; 1998 c 79 § 16; 1997 c 58 § 303; 1992 c 7 § 59; 1979 c 141 § 329; 1965 ex.s. c 34 § 1.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

Additional notes found at www.leg.wa.gov

74.08.335 Transfers of property to qualify for assistance. Temporary assistance for needy families and benefits under RCW 74.62.030 and 43.185C.220 shall not be granted to any person who has made an assignment or transfer of property for the purpose of rendering himself or herself eligible for the assistance. There is a rebuttable presumption that a person who has transferred or transfers any real or personal property or any interest in property within two years of the date of application for the assistance without receiving adequate monetary consideration therefor, did so for the purpose of rendering himself or herself eligible for the assistance. Any person who transfers property for the purpose of rendering himself or herself eligible for assistance, or any person who after becoming a recipient transfers any property or any interest in property without the consent of the secretary, shall be ineligible for assistance for a period of time during which the reasonable value of the property so transferred would have been adequate to meet the person's needs under normal conditions of living: PROVIDED, That the secretary is hereby authorized to allow exceptions in cases where undue hardship would result from a denial of assistance. [2011 1st

sp.s. c 36 § 29; 2010 1st sp.s. c 8 § 26; 1997 c 59 § 13; 1980 c 79 § 2; 1979 c 141 § 330; 1959 c 26 § 74.08.335. Prior: 1953 c 174 § 33.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

74.08.580 Electronic benefit cards—Prohibited uses—Violations. (1) Any person receiving public assistance is prohibited from using electronic benefit cards or cash obtained with electronic benefit cards:

(a) For the purpose of participating in any of the activities authorized under chapter 9.46 RCW;

(b) For the purpose of parimutuel wagering authorized under chapter 67.16 RCW;

(c) To purchase lottery tickets or shares authorized under chapter 67.70 RCW;

(d) For the purpose of participating in or purchasing any activities located in a tattoo, body piercing, or body art shop licensed under chapter 18.300 RCW;

(e) To purchase cigarettes as defined in RCW 82.24.010 or tobacco products as defined in RCW 82.26.010;

(f) To purchase any items regulated under Title 66 RCW;

or
(g) For the purpose of purchasing or participating in any activities in any location listed in subsection (2) of this section.

(2) On or before January 1, 2012, the businesses listed in this subsection must disable the ability of ATM and point-of-sale machines located on their business premises to accept the electronic benefit card. The following businesses are required to comply with this mandate:

(a) Taverns licensed under RCW 66.24.330;

(b) Beer/wine specialty stores licensed under RCW 66.24.371;

(c) Nightclubs licensed under RCW 66.24.600;

(d) Contract liquor stores defined under RCW 66.04.010;

(e) Bail bond agencies regulated under chapter 18.185 RCW;

(f) Gambling establishments licensed under chapter 9.46 RCW;

(g) Tattoo, body piercing, or body art shops regulated under chapter 18.300 RCW;

(h) Adult entertainment venues with performances that contain erotic material where minors under the age of eighteen are prohibited under RCW 9.68A.150; and

(i) Any establishments where persons under the age of eighteen are not permitted.

(3) The department must notify the licensing authority of any business listed in subsection (2) of this section that such business has continued to allow the use of the electronic benefit card in violation of subsection (2) of this section.

(4) Only the recipient, an eligible member of the household, or the recipient's authorized representative may use an electronic benefit card or the benefit and such use shall only be for the respective benefit program purposes. The recipient shall not sell, or attempt to sell, exchange, or donate an elec-

tronic benefit card or any benefits to any other person or entity.

(5) The first violation of subsection (1) or (4) of this section by a recipient constitutes a class 4 civil infraction under RCW 7.80.120. Second and subsequent violations of subsection (1) or (4) of this section constitute a class 3 civil infraction under RCW 7.80.120.

(a) The department shall notify, in writing, all recipients of electronic benefit cards that any violation of subsection (1) or (4) of this section could result in legal proceedings and forfeiture of all cash public assistance.

(b) Whenever the department receives notice that a person has violated subsection (1) or (4) of this section, the department shall notify the person in writing that the violation could result in legal proceedings and forfeiture of all cash public assistance.

(c) The department shall assign a protective payee to the person receiving public assistance who violates subsection (1) or (4) of this section two or more times. [2011 1st sp.s. c 42 § 14; 2002 c 252 § 1.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Chapter 74.08A RCW

WASHINGTON WORKFIRST TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Sections

74.08A.010 Time limits—Transitional food stamp assistance.

74.08A.039 Income eligibility—Federal supplemental security income.

74.08A.210 Diversion program—Emergency assistance.

74.08A.250 "Work activity" defined.

74.08A.260 Work activity—Referral—Individual responsibility plan—Refusal to work.

74.08A.440 Recipients exempted from active work search—Benefits eligibility.

74.08A.010 Time limits—Transitional food stamp assistance. (1) A family that includes an adult who has received temporary assistance for needy families for sixty months after July 27, 1997, shall be ineligible for further temporary assistance for needy families assistance.

(2) For the purposes of applying the rules of this section, the department shall count any month in which an adult family member received a temporary assistance for needy families cash assistance grant unless the assistance was provided when the adult family member was a minor child and not the head of the household or married to the head of the household.

(3) The department shall adopt regulations to apply the sixty-month time limit to households in which a parent is in the home and ineligible for temporary assistance for needy families. Any regulations shall be consistent with federal funding requirements.

(4) The department shall refer recipients who require specialized assistance to appropriate department programs, crime victims' programs through the department of commerce, or the crime victims' compensation program of the department of labor and industries.

(5) The department may exempt a recipient and the recipient's family from the application of subsection (1) of

this section by reason of hardship or if the recipient meets the family violence options of section 402(A)(7) of Title IVA of the federal social security act as amended by P.L. 104-193. Policies related to circumstances under which a recipient will be exempted from the application of subsection (1) or (3) of this section shall treat adults receiving benefits on their own behalf, and parents receiving benefits on behalf of their child similarly, unless required otherwise under federal law.

(6) The department shall not exempt a recipient and his or her family from the application of subsection (1) or (3) of this section until after the recipient has received fifty-two months of assistance under this chapter.

(7) Beginning on October 31, 2005, the department shall provide transitional food stamp assistance for a period of five months to a household that ceases to receive temporary assistance for needy families assistance and is not in sanction status. If necessary, the department shall extend the household's food stamp certification until the end of the transition period. [2011 1st sp.s. c 42 § 6; 2004 c 54 § 4; 1997 c 58 § 103.]

Effective date—2011 1st sp.s. c 42 § 6: "Section 6 of this act takes effect September 1, 2011." [2011 1st sp.s. c 42 § 29.]

Findings—Intent—2011 1st sp.s. c 42: See note following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Findings—Conflict with federal requirements—2004 c 54: See notes following RCW 28A.235.160.

74.08A.039 Income eligibility—Federal supplemental security income. In determining the income eligibility of an applicant or recipient for temporary assistance for needy families or WorkFirst, the department shall not count the federal supplemental security income received by a household member. [2011 1st sp.s. c 42 § 5.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

74.08A.210 Diversion program—Emergency assistance. (1) In order to prevent some families from developing dependency on temporary assistance for needy families, the department shall make available to qualifying applicants a diversion program designed to provide brief, emergency assistance for families in crisis whose income and assets would otherwise qualify them for temporary assistance for needy families.

(2) Diversion assistance may include cash or vouchers in payment for the following needs:

- (a) Child care;
- (b) Housing assistance;
- (c) Transportation-related expenses;
- (d) Food;
- (e) Medical costs for the recipient's immediate family;
- (f) Employment-related expenses which are necessary to keep or obtain paid unsubsidized employment.

(3) Diversion assistance is available once in each twelve-month period for each adult applicant. Recipients of diversion assistance are not included in the temporary assistance for needy families program.

(4) Diversion assistance may not exceed one thousand five hundred dollars for each instance.

(5) To be eligible for diversion assistance, a family must otherwise be eligible for temporary assistance for needy families.

(6) Families ineligible for temporary assistance for needy families or benefits under RCW 74.62.030 due to sanction, noncompliance, the lump sum income rule, or any other reason are not eligible for diversion assistance.

(7) Families must provide evidence showing that a bona fide need exists according to subsection (2) of this section in order to be eligible for diversion assistance.

An adult applicant may receive diversion assistance of any type no more than once per twelve-month period. If the recipient of diversion assistance is placed on the temporary assistance for needy families program within twelve months of receiving diversion assistance, the prorated dollar value of the assistance shall be treated as a loan from the state, and recovered by deduction from the recipient's cash grant. [2011 1st sp.s. c 36 § 30; 2010 1st sp.s. c 8 § 27; 1997 c 58 § 302.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

74.08A.250 "Work activity" defined. Unless the context clearly requires otherwise, as used in this chapter, "work activity" means:

(1) Unsubsidized paid employment in the private or public sector;

(2) Subsidized paid employment in the private or public sector, including employment through the state or federal work-study program for a period not to exceed twenty-four months;

(3) Work experience, including:

(a) An internship or practicum, that is paid or unpaid and is required to complete a course of vocational training or to obtain a license or certificate in a high-demand occupation, as determined by the employment security department. No internship or practicum shall exceed twelve months; or

(b) Work associated with the refurbishing of publicly assisted housing, if sufficient paid employment is not available;

(4) On-the-job training;

(5) Job search and job readiness assistance;

(6) Community service programs, including a recipient's voluntary service at a child care or preschool facility licensed under chapter 43.215 RCW or an elementary school in which his or her child is enrolled;

(7) Vocational educational training, not to exceed twelve months with respect to any individual;

(8) Job skills training directly related to employment;

(9) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a GED;

(10) Satisfactory attendance at secondary school or in a course of study leading to a GED, in the case of a recipient who has not completed secondary school or received such a certificate;

(11) The provision of child care services to an individual who is participating in a community service program;

(12) Internships, that shall be paid or unpaid work experience performed by an intern in a business, industry, or government or nongovernmental agency setting;

(13) Practicums, which include any educational program in which a student is working under the close supervision of a professional in an agency, clinic, or other professional practice setting for purposes of advancing their skills and knowledge;

(14) Services required by the recipient under RCW 74.08.025(3) and 74.08A.010(4) to become employable;

(15) Financial literacy activities designed to be effective in assisting a recipient in becoming self-sufficient and financially stable; and

(16) Parent education services or programs that support development of appropriate parenting skills, life skills, and employment-related competencies. [2011 1st sp.s. c 42 § 8; 2009 c 353 § 6; 2006 c 107 § 2; 2000 c 10 § 1; 1997 c 58 § 311.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Findings—Intent—2006 c 107: "The legislature finds that for a variety of reasons, many citizens may lack the basic financial knowledge necessary to spend their money wisely, save for the future, and manage money challenges, such as a job loss, financing a college education, or a catastrophic injury. The legislature also finds that financial literacy is an essential element in achieving financial stability and self-sufficiency. The legislature intends to encourage participation in financial literacy training by WorkFirst participants, in order to promote their ability to make financial decisions that will contribute to their long-term financial well-being." [2006 c 107 § 1.]

Effective date—2006 c 107: "This act takes effect January 1, 2007." [2006 c 107 § 4.]

74.08A.260 Work activity—Referral—Individual responsibility plan—Refusal to work. (1) Each recipient shall be assessed after determination of program eligibility and before referral to job search. Assessments shall be based upon factors that are critical to obtaining employment, including but not limited to education, availability of child care, history of family violence, history of substance abuse, and other factors that affect the ability to obtain employment. Assessments may be performed by the department or by a contracted entity. The assessment shall be based on a uniform, consistent, transferable format that will be accepted by all agencies and organizations serving the recipient.

(2) Based on the assessment, an individual responsibility plan shall be prepared that: (a) Sets forth an employment goal and a plan for maximizing the recipient's success at meeting the employment goal; (b) considers WorkFirst educational and training programs from which the recipient could benefit; (c) contains the obligation of the recipient to participate in the program by complying with the plan; (d) moves the recipient into full-time WorkFirst activities as quickly as possible; and (e) describes the services available to the recipient either during or after WorkFirst to enable the recipient to obtain and keep employment and to advance in the workplace and increase the recipient's wage earning potential over time.

(3) Recipients who are not engaged in work and work activities, and do not qualify for a good cause exemption under RCW 74.08A.270, shall engage in self-directed service as provided in RCW 74.08A.330.

(4) If a recipient refuses to engage in work and work activities required by the department, the family's grant shall be reduced by the recipient's share, and may, if the department determines it appropriate, be terminated.

(5) The department may waive the penalties required under subsection (4) of this section, subject to a finding that the recipient refused to engage in work for good cause provided in RCW 74.08A.270.

(6) In consultation with the recipient, the department or contractor shall place the recipient into a work activity that is available in the local area where the recipient resides.

(7) Assessments conducted under this section shall include a consideration of the potential benefit to the recipient of engaging in financial literacy activities. The department shall consider the options for financial literacy activities available in the community, including information and resources available through the financial education public-private partnership created under RCW 28A.300.450. The department may authorize up to ten hours of financial literacy activities as a core activity or an optional activity under WorkFirst.

(8)(a) From July 1, 2011, through June 30, 2012, subsections (2) through (6) of this section are suspended for a recipient who is a parent or other relative personally providing care for one child under the age of two years, or two or more children under the age of six years. This suspension applies to both one and two parent families. However, both parents in a two-parent family cannot use the suspension during the same month. Beginning July 1, 2012, the department shall phase in the work activity requirements that were suspended, beginning with those recipients closest to reaching the sixty-month limit of receiving temporary assistance for needy families under RCW 74.08A.010(1). The phase in shall be accomplished so that a fairly equal number of recipients required to participate in work activities are returned to those activities each month until the total number required to participate is participating by June 30, 2013. Nothing in this subsection shall prevent a recipient from participating in the WorkFirst program on a voluntary basis. Recipients who participate in the WorkFirst program on a voluntary basis shall be provided an option to participate in the program on a part-time basis, consisting of sixteen or fewer hours of activities per week. Recipients also may participate voluntarily on a full-time basis.

(b)(i) The period of suspension of work activities under this subsection provides an opportunity for the legislative and executive branches to oversee redesign of the WorkFirst program. To realize this opportunity, both during the period of suspension and following reinstatement of work activity requirements as redesign is being implemented, a legislative-executive WorkFirst oversight task force is established, with members as provided in this subsection (8)(b).

(ii) The president of the senate shall appoint two members from each of the two largest caucuses of the senate.

(iii) The speaker of the house of representatives shall appoint two members from each of the two largest caucuses of the house of representatives.

(iv) The governor shall appoint members representing the department of social and health services, the department of early learning, the department of commerce, the employment security department, the office of financial manage-

ment, and the state board for community and technical colleges.

(v) The task force shall choose cochairs, one from among the legislative members and one from among the executive branch members. The legislative members shall convene the initial meeting of the task force.

(c) The task force shall:

(i) Oversee the partner agencies' implementation of the redesign of the WorkFirst program and operation of the temporary assistance for needy families program to ensure that the programs are achieving desired outcomes for their clients;

(ii) Determine evidence-based outcome measures for the WorkFirst program, including measures related to equitably serving the needs of historically underrepresented populations, such as English language learners, immigrants, refugees, and other diverse communities;

(iii) Develop accountability measures for WorkFirst recipients and the state agencies responsible for their progress toward self-sufficiency;

(iv) Make recommendations to the governor and the legislature regarding:

(A) Policies to improve the effectiveness of the WorkFirst program over time;

(B) Early identification of those recipients most likely to experience long stays on the program and strategies to improve their ability to achieve progress toward self-sufficiency; and

(C) Necessary changes to the program, including taking into account federal changes to the temporary assistance for needy families program.

(d) The partner agencies must provide the task force with regular reports on:

(i) The partner agencies' progress toward meeting the outcome and performance measures established under (c) of this subsection;

(ii) Caseload trends and program expenditures, and the impact of those trends and expenditures on client services, including services to historically underrepresented populations; and

(iii) The characteristics of families who have been unsuccessful on the program and have lost their benefits either through sanction or the sixty-month time limit.

(e) Staff support for the task force must be provided by senate committee services, the house of representatives office of program research, and the state agency members of the task force.

(f) The task force shall meet on a quarterly basis beginning September 2011, or as determined necessary by the task force cochairs.

(g) During its tenure, the state agency members of the task force shall respond in a timely manner to data requests from the cochairs. [2011 1st sp.s. c 42 § 2; 2009 c 85 § 2; 2006 c 107 § 3; 2003 c 383 § 1; 1997 c 58 § 313.]

Findings—Intent—2011 1st sp.s. c 42: "The legislature finds that stable and sustainable employment is the key goal of the WorkFirst and temporary assistance for needy families programs. Achieving stable and sustainable employment is a developmental process that takes time, effort, and engagement. In times of fiscal challenge, temporary assistance for needy families and WorkFirst resources must be invested in program elements that produce the best results for low-income families and the state of Washington.

The legislature further finds that the core tenets that are the foundation

of Washington state's WorkFirst program are: (1) Achieving stable and successful employment; (2) recognizing the critical role that participants play in their children's development, healthy growth, and promotion of family stability; (3) developing strategies founded on the principle that WorkFirst is a transitional, not long-term, program to assist families on the pathway to self-sufficiency while holding them accountable; and (4) leveraging resources outside the funding for temporary assistance for needy families is crucial to achieving WorkFirst goals. It is the intent of the legislature, using evidence-based and research-based practices, to develop a road map to self-sufficiency for WorkFirst participants and temporary assistance for needy families recipients.

The legislature further finds that parents are responsible for the support of their children and that they have up to sixty months of receipt of temporary assistance for needy families benefits, absent any applicable hardship extension, to achieve stable and sustainable employment or find other means to support their family. It is the intent of the legislature to apply a sixty-month time limit to the temporary assistance for needy families program, including households in which a parent is in the home and ineligible for temporary assistance for needy families. The legislature intends that hardship extensions be applied to families subject to time limits." [2011 1st sp.s. c 42 § 1.]

Effective date—2011 1st sp.s. c 42: "Except for section 6 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 42 § 28.]

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Findings—Intent—Effective date—2006 c 107: See notes following RCW 74.08A.250.

74.08A.440 Recipients exempted from active work search—Benefits eligibility. Recipients exempted from active work search activities due to incapacity or a disability shall receive services for which they are eligible, including aged, blind, or disabled assistance benefits as they relate to the facilitation of enrollment in the federal supplemental security income program, referrals to essential needs and housing support benefits, access to chemical dependency treatment, referrals to vocational rehabilitation, and other services needed to assist the recipient in becoming employable. Aged, blind, or disabled assistance and essential needs and housing support benefits shall not supplant cash assistance and other services provided through the temporary assistance for needy families program. To the greatest extent possible, services shall be funded through the temporary assistance for needy families appropriations. [2011 1st sp.s. c 36 § 31; 2010 1st sp.s. c 8 § 32.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Chapter 74.09 RCW MEDICAL CARE

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74.09.010 Definitions (as amended by 2011 c 316). ((As used in this chapter:)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Children's health program" means the health care services program provided to children under eighteen years of age and in households with incomes at or below the federal poverty level as annually defined by the federal department of health and human services as adjusted for family size, and who are not otherwise eligible for medical assistance or the limited casualty program for the medically needy.

(2) ("Committee" means the children's health services committee created in section 3 of this act.

(3)) "Chronic care management" means the health care management within a health home of persons identified with, or at high risk for, one or more chronic conditions. Effective chronic care management:

(a) Actively assists patients to acquire self-care skills to improve functioning and health outcomes, and slow the progression of disease or disability;

(b) Employs evidence-based clinical practices;

(c) Coordinates care across health care settings and providers, including tracking referrals;

(d) Provides ready access to behavioral health services that are, to the extent possible, integrated with primary care; and

(e) Uses appropriate community resources to support individual patients and families in managing chronic conditions.

(3) "Chronic condition" means a prolonged condition and includes, but is not limited to:

(a) A mental health condition;

(b) A substance use disorder;

(c) Asthma;

(d) Diabetes;

(e) Heart disease; and

(f) Being overweight, as evidenced by a body mass index over twenty-five.

(4) "County" means the board of county commissioners, county council, county executive, or tribal jurisdiction, or its designee. A combination of two or more county authorities or tribal jurisdictions may enter into joint agreements ((to fulfill the requirements of RCW 74.09.415 through 74.09.435)).

((4)) (5) "Department" means the department of social and health services.

((5)) (6) "Department of health" means the Washington state department of health created pursuant to RCW 43.70.020.

((6)) (7) "Full benefit dual eligible beneficiary" means an individual who, for any month: Has coverage for the month under a medicare prescription drug plan or medicare advantage plan with part D coverage; and is determined eligible by the state for full medicaid benefits for the month under any eligibility category in the state's medicaid plan or a section 1115 demonstration waiver that provides pharmacy benefits.

((7)) (8) "Health home" or "primary care health home" means coordinated health care provided by a licensed primary care provider coordinating all medical care services, and a multidisciplinary health care team comprised of clinical and nonclinical staff. The term "coordinating all medical care services" shall not be construed to require prior authorization by a primary care provider in order for a patient to receive treatment for covered services by an optometrist licensed under chapter 18.53 RCW. Primary care health home services shall include those services defined as health home services in 42 U.S.C. Sec. 1396w-4 and, in addition, may include, but are not limited to:

(a) Comprehensive care management including, but not limited to, chronic care treatment and management;

(b) Extended hours of service;

(c) Multiple ways for patients to communicate with the team, including electronically and by phone;

(d) Education of patients on self-care, prevention, and health promotion, including the use of patient decision aids;

(e) Coordinating and assuring smooth transitions and follow-up from inpatient to other settings;

(f) Individual and family support including authorized representatives;

(g) The use of information technology to link services, track tests, generate patient registries, and provide clinical data; and

(h) Ongoing performance reporting and quality improvement.

(9) "Internal management" means the administration of medical assistance, medical care services, the children's health program, and the limited casualty program.

~~((8))~~ (10) "Limited casualty program" means the medical care program provided to medically needy persons as defined under Title XIX of the federal social security act, and to medically indigent persons who are without income or resources sufficient to secure necessary medical services.

~~((9))~~ (11) "Medical assistance" means the federal aid medical care program provided to categorically needy persons as defined under Title XIX of the federal social security act.

~~((10))~~ (12) "Medical care services" means the limited scope of care financed by state funds and provided to *disability lifeline benefits recipients, and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW.

~~((11))~~ (13) "Multidisciplinary health care team" means an interdisciplinary team of health professionals which may include, but is not limited to, medical specialists, nurses, pharmacists, nutritionists, dieticians, social workers, behavioral and mental health providers including substance use disorder prevention and treatment providers, doctors of chiropractic, physical therapists, licensed complementary and alternative medicine practitioners, home care and other long-term care providers, and physicians' assistants.

(14) "Nursing home" means nursing home as defined in RCW 18.51.010.

~~((12))~~ (15) "Poverty" means the federal poverty level determined annually by the United States department of health and human services, or successor agency.

~~((13))~~ (16) "Primary care provider" means a general practice physician, family practitioner, internist, pediatrician, osteopath, naturopath, physician assistant, osteopathic physician assistant, and advanced registered nurse practitioner licensed under Title 18 RCW.

(17) "Secretary" means the secretary of social and health services. [2011 c 316 § 2. Prior: 2010 1st sp.s. c 8 § 28; 2007 c 3 § 2; 1990 c 296 § 6; 1987 c 406 § 11; 1981 1st ex.s. c 6 § 18; 1981 c 8 § 17; 1979 c 141 § 333; 1959 c 26 § 74.09.010; prior: 1955 c 273 § 2.]

*Reviser's note: The "disability lifeline program" was terminated and new benefit programs were created pursuant to 2011 1st sp.s. c 36.

74.09.010 Definitions (as amended by 2011 1st sp.s. c 15). ~~((As used in this chapter:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means the Washington state health care authority.

(2) "Children's health program" means the health care services program provided to children under eighteen years of age and in households with incomes at or below the federal poverty level as annually defined by the federal department of health and human services as adjusted for family size, and who are not otherwise eligible for medical assistance or the limited casualty program for the medically needy.

~~((2) "Committee" means the children's health services committee created in section 3 of this act.)~~

(3) "County" means the board of county commissioners, county council, county executive, or tribal jurisdiction, or its designee. ~~((A combination of two or more county authorities or tribal jurisdictions may enter into joint agreements to fulfill the requirements of RCW 74.09.415 through 74.09.435.))~~

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

(5) "Department of health" means the Washington state department of health created pursuant to RCW 43.70.020.

(6) "Director" means the director of the Washington state health care authority.

(7) "Full benefit dual eligible beneficiary" means an individual who, for any month: Has coverage for the month under a medicare prescription drug plan or medicare advantage plan with part D coverage; and is determined eligible by the state for full medicaid benefits for the month under any eligibility category in the state's medicaid plan or a section 1115 demonstration waiver that provides pharmacy benefits.

~~((7))~~ (8) "Internal management" means the administration of medical assistance, medical care services, the children's health program, and the limited casualty program.

~~((8))~~ (9) "Limited casualty program" means the medical care program provided to medically needy persons as defined under Title XIX of the federal social security act, and to medically indigent persons who are without income or resources sufficient to secure necessary medical services.

~~((9))~~ (10) "Medical assistance" means the federal aid medical care program provided to categorically needy persons as defined under Title XIX of the federal social security act.

~~((10))~~ (11) "Medical care services" means the limited scope of care financed by state funds and provided to *disability lifeline benefits recipients, and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW.

~~((11))~~ (12) "Nursing home" means nursing home as defined in RCW 18.51.010.

~~((12))~~ (13) "Poverty" means the federal poverty level determined annually by the United States department of health and human services, or successor agency.

~~((13))~~ (14) "Secretary" means the secretary of social and health services. [2011 1st sp.s. c 15 § 2. Prior: 2010 1st sp.s. c 8 § 28; 2007 c 3 § 2; 1990 c 296 § 6; 1987 c 406 § 11; 1981 1st ex.s. c 6 § 18; 1981 c 8 § 17; 1979 c 141 § 333; 1959 c 26 § 74.09.010; prior: 1955 c 273 § 2.]

Reviser's note: *(1) The "disability lifeline program" was terminated and new benefit programs were created pursuant to 2011 1st sp.s. c 36.

(2) RCW 74.09.010 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2011 1st sp.s. c 15: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 15 § 130.]

Findings—Intent—2011 1st sp.s. c 15: "The legislature finds that:

(1) Washington state government must be organized to be efficient, cost-effective, and responsive to its residents;

(2) The cost of state-purchased health care continues to grow at an unsustainable rate, now representing nearly one-third of the state's budget and hindering our ability to invest in other essential services such as education and public safety;

(3) Responsibility for state health care purchasing is currently spread over multiple agencies, but successful interagency collaboration on quality and cost initiatives has helped demonstrate the benefits to the state of centralized health care purchasing;

(4) Consolidating the majority of state health care purchasing into a single state agency will best position the state to work with others, including private sector purchasers, health insurance carriers, health care providers, and consumers to increase the quality and affordability of health care for all state residents;

(5) The development and implementation of uniform state policies for all state-purchased health care is among the purposes for which the health care authority was originally created; and

(6) The state will be best able to take advantage of the opportunities and meet its obligations under the federal affordable care act, including establishment of a health benefit exchange and medicaid expansion, if primary responsibility for doing so rests with a single state agency.

The legislature therefore intends, where appropriate, to consolidate state health care purchasing within the health care authority, positioning the state to use its full purchasing power to get the greatest value for its money, and allowing other agencies to focus even more intently on their core missions." [2011 1st sp.s. c 15 § 1.]

Report—2011 1st sp.s. c 15: "(1) By December 10, 2011, the department of social and health services and the health care authority shall provide a preliminary report, and by December 1, 2012, provide a final implementation plan, to the governor and the legislature with recommendations regarding the role of the health care authority in the state's purchasing of mental health treatment, substance abuse treatment, and long-term care services, including services for those with developmental disabilities.

(2) The reports shall:

(a) Consider options for effectively coordinating the purchase and delivery of care for people who need long-term care, developmental disabilities, mental health, or chemical dependency services. Options considered may include, but are not limited to, transitioning purchase of these services from the department of social and health services to the health care authority, and strategies for the agencies to collaborate seamlessly while purchasing services separately; and

(b) Address the following components:

(i) Incentives to improve prevention efforts;

(ii) Service delivery approaches, including models for care management and care coordination and benefit design;

(iii) Rules to assure that those requiring long-term care services and supports receive that care in the least restrictive setting appropriate to their needs;

(iv) Systems to measure cost savings;

(v) Mechanisms to measure health outcomes and consumer satisfac-

tion;

(vi) The designation of a single point of entry for financial and functional eligibility determinations for long-term care services; and

(vii) Process for collaboration with local governments.

(3) In developing these recommendations, the agencies shall:

(a) Consult with tribal governments and with interested stakeholders, including consumers, health care and other service providers, health insurance carriers, and local governments; and

(b) Cooperate with the joint select committee on health reform implementation established in House Concurrent Resolution No. 4404 and any of its advisory committees. The agencies shall strongly consider the guidance and input received from these forums in the development of its recommendations.

(4) The agencies shall submit a progress report to the governor and the legislature by November 15, 2013, that provides details on the agencies' progress on purchasing coordination to date." [2011 1st sp.s. c 15 § 116.]

Agency transfer—2011 1st sp.s. c 15: "(1) All powers, duties, and functions of the department of social and health services pertaining to the medical assistance program and the medicaid purchasing administration are transferred to the health care authority to the extent necessary to carry out the purposes of this act. All references to the secretary or the department of social and health services in the Revised Code of Washington shall be construed to mean the director or the health care authority when referring to the functions transferred in this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of social and health services pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the health care authority. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of social and health services in carrying out the powers, functions, and duties transferred shall be made available to the health care authority. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the health care authority.

(b) Any appropriations made to the department of social and health services for carrying out the powers, functions, and duties transferred shall, on July 1, 2011, be transferred and credited to the health care authority.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the medicaid purchasing administration at the department of social and health services are transferred to the jurisdiction of the health care authority. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the health care authority to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the department of social and health services pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the health care authority. All existing contracts and obligations shall remain in full force and shall be performed by the health care authority.

(5) The transfer of the powers, duties, functions, and personnel of the department of social and health services shall not affect the validity of any act performed before July 1, 2011.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) A nonsupervisory medicaid purchasing unit bargaining unit is created at the health care authority. All nonsupervisory civil service employees of the medicaid purchasing administration at the department of social and health services assigned to the health care authority under this section whose positions are within the existing bargaining unit description at the department of social and health services shall become a part of the nonsupervisory medicaid purchasing unit bargaining unit at the health care authority under the provisions of chapter 41.80 RCW. The exclusive bargaining representative of the existing bargaining unit at the department of social and health services is certified as the exclusive bargaining representative of the nonsupervisory medicaid purchasing unit bargaining unit at the health care authority without the necessity of an election.

(8) A supervisory medicaid purchasing unit bargaining unit is created at the health care authority. All supervisory civil service employees of the medicaid purchasing administration at the department of social and health services assigned to the health care authority under this section whose positions are within the existing bargaining unit description at the department of social and health services shall become a part of the supervisory medicaid purchasing unit bargaining unit at the health care authority under the provisions of chapter 41.80 RCW. The exclusive bargaining representative of the existing bargaining unit at the department of social and health services is certified as the exclusive bargaining representative of the supervisory medicaid purchasing unit bargaining unit at the health care authority without the necessity of an election.

(9) The bargaining units of employees created under this section are appropriate units under the provisions of chapter 41.80 RCW. However, nothing contained in this section shall be construed to alter the authority of the public employment relations commission under the provisions of chapter 41.80 RCW to amend or modify the bargaining units.

(10) Positions from the department of social and health services central administration are transferred to the jurisdiction of the health care authority. Employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the health care authority to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(11) All classified employees of the department of social and health services central administration assigned to the health care authority under subsection (10) of this section whose positions are within an existing bargaining unit description at the health care authority shall become a part of the existing bargaining unit at the health care authority and shall be considered an appropriate inclusion or modification of the existing bargaining unit under the provisions of chapter 41.80 RCW." [2011 1st sp.s. c 15 § 124.]

References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: "The code reviser shall note wherever "administrator" is used or referred to in the Revised Code of Washington as the head of the health care authority that the title of the agency head has been changed to "director." The code reviser shall prepare legislation for the 2012 regular session that changes all statutory references to "administrator" of the health care authority to "director" of the health care authority." [2011 1st sp.s. c 15 § 125.]

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Additional notes found at www.leg.wa.gov

74.09.015 Nurse hotline, when funded. To the extent that sufficient funding is provided specifically for this purpose, the authority shall provide all persons receiving services under this chapter with access to a twenty-four hour, seven day a week nurse hotline. The authority shall determine the most appropriate way to provide the nurse hotline under RCW 41.05.037 and this section, which may include use of the 211 system established in chapter 43.211 RCW. [2011 1st sp.s. c 15 § 122; 2007 c 259 § 16.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

74.09.035 Medical care services—Eligibility, standards—Limits (as amended by 2011 1st sp.s. c 15). (1) To the extent of available funds, medical care services may be provided to recipients of disability lifeline benefits, persons denied disability lifeline benefits under RCW *74.04.005(5)(b) or **74.04.655 who otherwise meet the requirements of *RCW 74.04.005(5)(a), and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW, in accordance with medical eligibility requirements established by the ((department)) authority. To the extent authorized in the operating budget, upon implementation of a federal medicaid 1115 waiver providing federal matching funds for medical care services, these services also may be provided to persons who have been terminated from disability lifeline benefits under *RCW 74.04.005(5)(h).

(2) Determination of the amount, scope, and duration of medical care services shall be limited to coverage as defined by the ~~((department))~~ authority, except that adult dental, and routine foot care shall not be included unless there is a specific appropriation for these services.

(3) The ~~((department))~~ authority shall enter into performance-based contracts with one or more managed health care systems for the provision of medical care services to recipients of disability lifeline benefits. The contract must provide for integrated delivery of medical and mental health services.

(4) The ~~((department))~~ authority shall establish standards of assistance and resource and income exemptions, which may include deductibles and co-insurance provisions. In addition, the ~~((department))~~ authority may include a prohibition against the voluntary assignment of property or cash for the purpose of qualifying for assistance.

(5) Residents of skilled nursing homes, intermediate care facilities, and intermediate care facilities for ~~((the mentally retarded))~~ persons with intellectual disabilities, as that term is described by federal law, who are eligible for medical care services shall be provided medical services to the same extent as provided to those persons eligible under the medical assistance program.

(6) Payments made by the ~~((department))~~ authority under this program shall be the limit of expenditures for medical care services solely from state funds.

(7) Eligibility for medical care services shall commence with the date of certification for disability lifeline benefits or the date of eligibility for alcohol and drug addiction services provided under chapter 74.50 RCW. [2011 1st sp.s. c 15 § 3. Prior: 2010 1st sp.s. c 8 § 29; 2010 c 94 § 22; 1987 c 406 § 12; 1985 c 5 § 1; 1983 1st ex.s. c 43 § 2; 1982 1st ex.s. c 19 § 3; 1981 1st ex.s. c 6 § 19.]

Reviser's note: *(1) RCW 74.04.005 was amended by 2011 1st sp.s. c 36 § 8, deleting subsection (5)(a), (b), and (h).

** (2) RCW 74.04.655 was amended by 2011 1st sp.s. c 36 § 24, removing the reference to "disability lifeline" benefits.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.035 Medical care services—Eligibility, standards—Limits (as amended by 2011 1st sp.s. c 36). (1) To the extent of available funds, medical care services may be provided to ~~((recipients of disability lifeline benefits, persons denied disability lifeline benefits under RCW 74.04.005(5)(b) or 74.04.655 who otherwise meet the requirements of RCW 74.04.005(5)(a), and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW, in accordance with medical eligibility requirements established by the department.))~~:

(a) Persons who:

(i) ~~Are incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ninety days as determined by the department. The standard for incapacity in this subsection, as evidenced by the ninety-day duration standard, is not intended to be as stringent as federal supplemental security income disability standards;~~

(ii) ~~Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law;~~

(iii) ~~Have furnished the department their social security number. If the social security number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of benefits, and the social security number shall be provided to the department upon receipt;~~

(iv) ~~Have countable income as described in RCW 74.04.005 at or below four hundred twenty-eight dollars for a married couple or at or below three hundred thirty-nine dollars for a single individual; and~~

(v) ~~Do not have countable resources in excess of those described in RCW 74.04.005.~~

(b) ~~Persons eligible for the aged, blind, or disabled assistance program authorized in RCW 74.62.030 and who are not eligible for medicaid under RCW 74.09.510.~~

(c) ~~Persons eligible for alcohol and drug addiction services provided under chapter 74.50 RCW, in accordance with medical eligibility requirements established by the department.~~

(d) ~~The following persons are not eligible for medical care services:~~

(i) ~~Persons who are unemployable due primarily to alcohol or drug addiction, except as provided in (c) of this subsection. These persons shall be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility~~

~~review. This subsection shall not be construed to prohibit the department from granting medical care services benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for medical care services;~~

~~(ii) Persons who refuse or fail to cooperate in obtaining federal aid assistance, without good cause;~~

~~(iii) Persons who refuse or fail without good cause to participate in drug or alcohol treatment if an assessment by a certified chemical dependency counselor indicates a need for such treatment. Good cause must be found to exist when a person's physical or mental condition, as determined by the department, prevents the person from participating in drug or alcohol dependency treatment, when needed outpatient drug or alcohol treatment is not available to the person in the county of his or her residence or when needed inpatient treatment is not available in a location that is reasonably accessible for the person; and~~

~~(iv) Persons who are fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or who are violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction.~~

~~(e) For purposes of determining whether a person is incapacitated from gainful employment under (a) of this subsection:~~

~~(i) The department shall adopt by rule medical criteria for incapacity determinations to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information; and~~

~~(ii) The process implementing the medical criteria shall involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.~~

~~(f) For purposes of reviewing a person's continuing eligibility and in order to remain eligible for the program, persons who have been found to have an incapacity from gainful employment must demonstrate that there has been no material improvement in their medical or mental health condition. The department may discontinue benefits when there was specific error in the prior determination that found the person eligible by reason of incapacitation.~~

~~(2) Enrollment in medical care services may not result in expenditures that exceed the amount that has been appropriated in the operating budget. If it appears that continued enrollment will result in expenditures exceeding the appropriated level for a particular fiscal year, the department may freeze new enrollment and establish a waiting list of ~~((eligible))~~ persons who may receive benefits only when sufficient funds are available. ~~((Upon implementation of a federal medicaid 1115 waiver providing federal matching funds for medical care services, persons subject to termination of disability lifeline benefits under RCW 74.04.005(5)(h) remain enrolled in medical care services and persons subject to denial of disability lifeline benefits under RCW 74.04.005(5)(h) remain eligible for medical care services.~~~~

~~(2)) (3) Determination of the amount, scope, and duration of medical care services shall be limited to coverage as defined by the department, except that adult dental, and routine foot care shall not be included unless there is a specific appropriation for these services.~~

~~((3)) (4) The department shall enter into performance-based contracts with one or more managed health care systems for the provision of medical care services ~~((to recipients of disability lifeline benefits))~~ under this section. The contract must provide for integrated delivery of medical and mental health services.~~

~~((4)) (5) The department shall establish standards of assistance and resource and income exemptions, which may include deductibles and co-insurance provisions. In addition, the department may include a prohibition against the voluntary assignment of property or cash for the purpose of qualifying for assistance.~~

~~((5)) (6) Residents of skilled nursing homes, intermediate care facilities, and intermediate care facilities for persons with intellectual disabilities, as that term is described by federal law, who are eligible for medical care services shall be provided medical services to the same extent as provided to those persons eligible under the medical assistance program.~~

~~((6) Eligibility for medical care services shall commence with the date of certification for disability lifeline benefits or the date of eligibility for alcohol and drug addiction services provided under chapter 74.50 RCW.)~~

~~(7) Eligibility for medical care services shall commence with the date of certification for medical care services, date of eligibility for the aged, blind, or disabled assistance program provided under RCW 74.62.030, or the date of eligibility for alcohol and drug addiction services provided under~~

chapter 74.50 RCW. [2011 1st sp.s. c 36 § 6; 2011 c 284 § 3. Prior: 2010 1st sp.s. c 8 § 29; 2010 c 94 § 22; 1987 c 406 § 12; 1985 c 5 § 1; 1983 1st ex.s. c 43 § 2; 1982 1st ex.s. c 19 § 3; 1981 1st ex.s. c 6 § 19.]

Reviser's note: RCW 74.09.035 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2011 1st sp.s. c 36 § 6: "Section 6 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 22, 2011." [2011 1st sp.s. c 36 § 39.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: See note following RCW 74.04.225.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Purpose—2010 c 94: See note following RCW 44.04.280.

Additional notes found at www.leg.wa.gov

74.09.037 Identification card—Social security number restriction. Any card issued by the authority or a managed health care system to a person receiving services under this chapter, that must be presented to providers for purposes of claims processing, may not display an identification number that includes more than a four-digit portion of the person's complete social security number. [2011 1st sp.s. c 15 § 4; 2004 c 115 § 3.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.050 Director's powers and duties—Personnel—Medical screeners—Medical director. (1) The director shall appoint such professional personnel and other assistants and employees, including professional medical screeners, as may be reasonably necessary to carry out the provisions of this chapter. The medical screeners shall be supervised by one or more physicians who shall be appointed by the director or his or her designee. The director shall appoint a medical director who is licensed under chapter 18.57 or 18.71 RCW.

(2) Whenever the director's authority is not specifically limited by law, he or she has complete charge and supervisory powers over the authority. The director is authorized to create such administrative structures as deemed appropriate, except as otherwise specified by law. The director has the power to employ such assistants and personnel as may be necessary for the general administration of the authority. Except as elsewhere specified, such employment must be in accordance with the rules of the state civil service law, chapter 41.06 RCW. [2011 1st sp.s. c 15 § 5; 2000 c 5 § 15; 1979 c 141 § 335; 1959 c 26 § 74.09.050. Prior: 1955 c 273 § 6.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Additional notes found at www.leg.wa.gov

74.09.055 Copayment, deductible, coinsurance, other cost-sharing requirements authorized. The authority is authorized to establish copayment, deductible, or coinsurance, or other cost-sharing requirements for recipients of any medical programs defined in RCW 74.09.010, except that

premiums shall not be imposed on children in households at or below two hundred percent of the federal poverty level. [2011 1st sp.s. c 15 § 6; 2006 c 24 § 1; 2003 1st sp.s. c 14 § 1; 1993 c 492 § 231; 1982 c 201 § 19.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2003 1st sp.s. c 14: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 1st sp.s. c 14 § 2.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

74.09.075 Employability and disability evaluation—Medical condition—Medical reports—Medical consultations and assistance. The department or authority, as appropriate, shall provide (1) for evaluation of employability when a person is applying for public assistance representing a medical condition as a basis for need, and (2) for medical reports to be used in the evaluation of total and permanent disability. It shall further provide for medical consultation and assistance in determining the need for special diets, housekeeper and attendant services, and other requirements as found necessary because of the medical condition under the rules promulgated by the secretary or director. [2011 1st sp.s. c 15 § 7; 1979 c 141 § 337; 1967 ex.s. c 30 § 2.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.080 Methods of performing administrative responsibilities. In carrying out the administrative responsibility of this chapter, the department or authority, as appropriate:

(1) May contract with an individual or a group, may utilize existing local state public assistance offices, or establish separate welfare medical care offices on a county or multi-county unit basis as found necessary; and

(2) Shall determine both financial and functional eligibility for persons applying for long-term care services under chapter 74.39 or 74.39A RCW as a unified process in a single long-term care organizational unit. [2011 1st sp.s. c 15 § 8; 1979 c 141 § 338; 1959 c 26 § 74.09.080. Prior: 1955 c 273 § 9.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.085 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.09.110 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.09.120 Purchases of services, care, supplies—Nursing homes—Veterans' homes—Institutions for persons with intellectual disabilities—Institutions for mental diseases. (1) The department shall purchase nursing home care by contract and payment for the care shall be in accordance with the provisions of chapter 74.46 RCW and rules adopted by the department. No payment shall be made to a

nursing home which does not permit inspection by the authority and the department of every part of its premises and an examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods of supply, and any other records the authority or the department deems relevant to the regulation of nursing home operations, enforcement of standards for resident care, and payment for nursing home services.

(2) The department may purchase nursing home care by contract in veterans' homes operated by the state department of veterans affairs and payment for the care shall be in accordance with the provisions of chapter 74.46 RCW and rules adopted by the department under the authority of RCW 74.46.800.

(3) The department may purchase care in institutions for persons with intellectual disabilities, also known as intermediate care facilities for persons with intellectual disabilities. The department shall establish rules for reasonable accounting and reimbursement systems for such care. Institutions for persons with intellectual disabilities include licensed nursing homes, public institutions, licensed boarding homes with fifteen beds or less, and hospital facilities certified as intermediate care facilities for persons with intellectual disabilities under the federal medicaid program to provide health, habilitative, or rehabilitative services and twenty-four hour supervision for persons with intellectual disabilities or related conditions and includes in the program "active treatment" as federally defined.

(4) The department may purchase care in institutions for mental diseases by contract. The department shall establish rules for reasonable accounting and reimbursement systems for such care. Institutions for mental diseases are certified under the federal medicaid program and primarily engaged in providing diagnosis, treatment, or care to persons with mental diseases, including medical attention, nursing care, and related services.

(5) Both the department and the authority may each purchase all other services provided under this chapter by contract or at rates established by the department or the authority respectively. [2011 1st sp.s. c 15 § 9; 2010 c 94 § 23; 1998 c 322 § 45; 1993 sp.s. c 3 § 8; 1992 c 8 § 1; 1989 c 372 § 15; 1983 1st ex.s. c 67 § 44; 1981 2nd ex.s. c 11 § 6; 1981 1st ex.s. c 2 § 11; (1980 c 177 § 84 repealed by 1983 1st ex.s. c 67 § 48); 1975 1st ex.s. c 213 § 1; 1967 ex.s. c 30 § 1; 1959 c 26 § 74.09.120. Prior: 1955 c 273 § 13.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Purpose—2010 c 94: See note following RCW 44.04.280.

Findings—1993 sp.s. c 3: See RCW 72.36.1601.

Conflict with federal requirements and this section: RCW 74.46.840.

Additional notes found at www.leg.wa.gov

74.09.160 Presentment of charges by contractors. Each vendor or group who has a contract and is rendering service to eligible persons as defined in this chapter shall submit such charges as agreed upon between the department or authority, as appropriate, and the individual or group no later than twelve months from the date of service. If the final charges are not presented within the twelve-month period,

they shall not be a charge against the state. Said twelve-month period may also be extended by regulation, but only if required by applicable federal law or regulation, and to no more than the extension of time so required. [2011 1st sp.s. c 15 § 10; 1991 c 103 § 1; 1980 c 32 § 11; 1979 ex.s. c 81 § 1; 1973 1st ex.s. c 48 § 1; 1959 c 26 § 74.09.160. Prior: 1955 c 273 § 17.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.180 Chapter does not apply if another party is liable—Exception—Subrogation—Lien—Reimbursement—Delegation of lien and subrogation rights. (1) The provisions of this chapter shall not apply to recipients whose personal injuries are occasioned by negligence or wrong of another: PROVIDED, HOWEVER, That the director may furnish assistance, under the provisions of this chapter, for the results of injuries to or illness of a recipient, and the authority shall thereby be subrogated to the recipient's rights against the recovery had from any tortfeasor or the tortfeasor's insurer, or both, and shall have a lien thereupon to the extent of the value of the assistance furnished by the authority. To secure reimbursement for assistance provided under this section, the authority may pursue its remedies under RCW 41.05A.070.

(2) The rights and remedies provided to the authority in this section to secure reimbursement for assistance, including the authority's lien and subrogation rights, may be delegated to a managed health care system by contract entered into pursuant to RCW 74.09.522. A managed health care system may enforce all rights and remedies delegated to it by the authority to secure and recover assistance provided under a managed health care system consistent with its agreement with the authority. [2011 1st sp.s. c 15 § 11; 1997 c 236 § 1; 1990 c 100 § 2; 1987 c 283 § 14; 1979 ex.s. c 171 § 14; 1971 ex.s. c 306 § 1; 1969 ex.s. c 173 § 8; 1959 c 26 § 74.09.180. Prior: 1955 c 273 § 19.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

74.09.185 Third party has legal liability to make payments—State acquires rights—Lien—Equitable subrogation does not apply. To the extent that payment for covered expenses has been made under medical assistance for health care items or services furnished to an individual, in any case where a third party has a legal liability to make payments, the state is considered to have acquired the rights of the individual to payment by any other party for those health care items or services. Recovery pursuant to the subrogation rights, assignment, or enforcement of the lien granted to the authority by this section shall not be reduced, prorated, or applied to only a portion of a judgment, award, or settlement, except as provided in RCW 41.05A.060 and 41.05A.070. The doctrine of equitable subrogation shall not apply to defeat, reduce, or prorate recovery by the authority as to its assignment, lien, or subrogation rights. [2011 1st sp.s. c 15 § 12; 1995 c 34 § 6.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.190 Religious beliefs—Construction of chapter. Nothing in this chapter shall be construed as empowering the secretary or director to compel any recipient of public assistance and a medical indigent person to undergo any physical examination, surgical operation, or accept any form of medical treatment contrary to the wishes of said person who relies on or is treated by prayer or spiritual means in accordance with the creed and tenets of any well recognized church or religious denomination. [2011 1st sp.s. c 15 § 13; 1979 c 141 § 342; 1959 c 26 § 74.09.190. Prior: 1955 c 273 § 23.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.200 Audits and investigations—Legislative declaration—State authority. The legislature finds and declares it to be in the public interest and for the protection of the health and welfare of the residents of the state of Washington that a proper regulatory and inspection program be instituted in connection with the providing of medical, dental, and other health services to recipients of public assistance and medically indigent persons. In order to effectively accomplish such purpose and to assure that the recipient of such services receives such services as are paid for by the state of Washington, the acceptance by the recipient of such services, and by practitioners of reimbursement for performing such services, shall authorize the secretary or director, to inspect and audit all records in connection with the providing of such services. [2011 1st sp.s. c 15 § 14; 1979 ex.s. c 152 § 1.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.210 Fraudulent practices—Penalties. (1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an individual public assistance recipient of health care, shall, on behalf of himself or others, obtain or attempt to obtain benefits or payments under this chapter in a greater amount than that to which entitled by means of:

- (a) A willful false statement;
- (b) By willful misrepresentation, or by concealment of any material facts; or
- (c) By other fraudulent scheme or device, including, but not limited to:
 - (i) Billing for services, drugs, supplies, or equipment that were unfurnished, of lower quality, or a substitution or misrepresentation of items billed; or
 - (ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person or entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess benefits or payments received, plus interest at the rate and in the manner provided in RCW 43.20B.695. Such person or other entity shall further, in addition to any other penalties provided by law, be subject to

civil penalties. The secretary or director, as appropriate, may assess civil penalties in an amount not to exceed three times the amount of such excess benefits or payments: PROVIDED, That these civil penalties shall not apply to any acts or omissions occurring prior to September 1, 1979. RCW 43.20A.215 governs notice of a civil fine and provides the right to an adjudicative proceeding.

(3) A criminal action need not be brought against a person for that person to be civilly liable under this section.

(4) In all proceedings under this section, service, adjudicative proceedings, and judicial review of such determinations shall be in accordance with chapter 34.05 RCW, the administrative procedure act.

(5) Civil penalties shall be deposited in the general fund upon their receipt. [2011 1st sp.s. c 15 § 15; 1989 c 175 § 146; 1987 c 283 § 7; 1979 ex.s. c 152 § 2.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

74.09.240 Bribes, kickbacks, rebates—Self-referrals—Penalties. (1) Any person, including any corporation, that solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind

(a) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this chapter, or

(b) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter,

shall be guilty of a class C felony; however, the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(2) Any person, including any corporation, that offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person

(a) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under this chapter, or

(b) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter,

shall be guilty of a class C felony; however, the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(3)(a) Except as provided in 42 U.S.C. 1395 nn, physicians are prohibited from self-referring any client eligible under this chapter for the following designated health services to a facility in which the physician or an immediate family member has a financial relationship:

- (i) Clinical laboratory services;
- (ii) Physical therapy services;
- (iii) Occupational therapy services;

- (iv) Radiology including magnetic resonance imaging, computerized axial tomography, and ultrasound services;
 - (v) Durable medical equipment and supplies;
 - (vi) Parenteral and enteral nutrients equipment and supplies;
 - (vii) Prosthetics, orthotics, and prosthetic devices;
 - (viii) Home health services;
 - (ix) Outpatient prescription drugs;
 - (x) Inpatient and outpatient hospital services;
 - (xi) Radiation therapy services and supplies.
- (b) For purposes of this subsection, "financial relationship" means the relationship between a physician and an entity that includes either:
- (i) An ownership or investment interest; or
 - (ii) A compensation arrangement.

For purposes of this subsection, "compensation arrangement" means an arrangement involving remuneration between a physician, or an immediate family member of a physician, and an entity.

(c) The department or authority, as appropriate, is authorized to adopt by rule amendments to 42 U.S.C. 1395 nn enacted after July 23, 1995.

(d) This section shall not apply in any case covered by a general exception specified in 42 U.S.C. Sec. 1395 nn.

(4) Subsections (1) and (2) of this section shall not apply to:

(a) A discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter; and

(b) Any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(5) Subsections (1) and (2) of this section, if applicable to the conduct involved, shall supersede the criminal provisions of chapter 19.68 RCW, but shall not preclude administrative proceedings authorized by chapter 19.68 RCW. [2011 1st sp.s. c 15 § 16; 1995 c 319 § 1; 1979 ex.s. c 152 § 5.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.260 Excessive charges, payments—Penalties.

Any person, including any corporation, that knowingly:

(1) Charges, for any service provided to a patient under any medical care plan authorized under this chapter, money or other consideration at a rate in excess of the rates established by the department or authority, as appropriate; or

(2) Charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under such plan, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient):

(a) As a precondition of admitting a patient to a hospital or nursing facility; or

(b) As a requirement for the patient's continued stay in such facility, when the cost of the services provided therein to the patient is paid for, in whole or in part, under such plan, shall be guilty

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of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [2011 1st sp.s. c 15 § 17; 1991 sp.s. c 8 § 7; 1979 ex.s. c 152 § 7.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

74.09.270 Failure to maintain trust funds in separate account—Penalties. (1) Any person having any patient trust funds in his or her possession, custody, or control, who, knowing that he or she is violating any statute, regulation, or agreement, deliberately fails to deposit, transfer, or maintain said funds in a separate, designated, trust bank account as required by such statute, regulation, or agreement shall be guilty of a gross misdemeanor and shall be punished by imprisonment for up to three hundred sixty-four days in the county jail, or by a fine of not more than ten thousand dollars or as authorized by RCW 9A.20.030, or by both such fine and imprisonment.

(2) "Patient trust funds" are funds received by any health care facility which belong to patients and are required by any state or federal statute, regulation, or by agreement to be kept in a separate trust bank account for the benefit of such patients.

(3) This section shall not be construed to prevent a prosecution for theft. [2011 c 96 § 54; 1979 ex.s. c 152 § 8.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

74.09.280 False verification of written statements—Penalties. The secretary or director may by rule require that any application, statement, or form filled out by suppliers of medical care under this chapter shall contain or be verified by a written statement that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each such paper shall in such event so state. The making or subscribing of any such papers or forms containing any false or misleading information may be prosecuted and punished under chapter 9A.72 RCW. [2011 1st sp.s. c 15 § 18; 1979 ex.s. c 152 § 9.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.290 Audits and investigations of providers—Patient records—Penalties. The secretary or director shall have the authority to:

(1) Conduct audits and investigations of providers of medical and other services furnished pursuant to this chapter, except that the Washington state medical quality assurance commission shall generally serve in an advisory capacity to the secretary or director in the conduct of audits or investigations of physicians. Any overpayment discovered as a result of an audit of a provider under this authority shall be offset by any underpayments discovered in that same audit sample. In order to determine the provider's actual, usual, customary, or prevailing charges, the secretary or director may examine such random representative records as necessary to show accounts billed and accounts received except that in the conduct of such examinations, patient names, other than public

assistance applicants or recipients, shall not be noted, copied, or otherwise made available to the department or authority. In order to verify costs incurred by the department or authority for treatment of public assistance applicants or recipients, the secretary or director may examine patient records or portions thereof in connection with services to such applicants or recipients rendered by a health care provider, notwithstanding the provisions of RCW 5.60.060, 18.53.200, 18.83.110, or any other statute which may make or purport to make such records privileged or confidential: PROVIDED, That no original patient records shall be removed from the premises of the health care provider, and that the disclosure of any records or information by the department or the authority is prohibited and shall be punishable as a class C felony according to chapter 9A.20 RCW, unless such disclosure is directly connected to the official purpose for which the records or information were obtained: PROVIDED FURTHER, That the disclosure of patient information as required under this section shall not subject any physician or other health services provider to any liability for breach of any confidential relationship between the provider and the patient, but no evidence resulting from such disclosure may be used in any civil, administrative, or criminal proceeding against the patient unless a waiver of the applicable evidentiary privilege is obtained: PROVIDED FURTHER, That the secretary or director shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation or proceedings;

(2) Approve or deny applications to participate as a provider of services furnished pursuant to this chapter;

(3) Terminate or suspend eligibility to participate as a provider of services furnished pursuant to this chapter; and

(4) Adopt, promulgate, amend, and repeal administrative rules, in accordance with the administrative procedure act, chapter 34.05 RCW, to carry out the policies and purposes of RCW 74.09.200 through 74.09.290. [2011 1st sp.s. c 15 § 19; 1994 sp.s. c 9 § 749; 1990 c 100 § 5; 1983 1st ex.s. c 41 § 23; 1979 ex.s. c 152 § 10.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

74.09.295 Disclosure of involuntary commitment information. It is permissible to provide to a correctional institution, as defined in RCW 9.94.049, with the fact, place, and date of an involuntary commitment and the fact and date of discharge or release of a person who has been involuntarily committed under chapter 71.05 or 71.34 RCW, without a person's consent, in the course of the implementation and use of the department's postinstitutional medical assistance system supporting the expedited medical determinations and medical suspensions as provided in RCW 74.09.555. Disclosure under this section is mandatory for the purposes of the health insurance portability and accountability act. [2011 c 305 § 2.]

Findings—2011 c 305: "The legislature finds that effective collaboration and communication between mental health and chemical dependency treatment providers and service delivery systems and law enforcement and criminal justice agencies is important to both the care of persons with mental disorders and chemical dependency and public safety. The legislature also finds that many state and local efforts in recent years have worked to address

improved treatment of persons with mental disorders, chemical dependency disorders, or co-occurring mental and substance abuse disorders who are confined in a correctional institution and to improve communication and collaboration among the agencies, institutions, and professionals who are responsible for the care or custody of those persons. While numerous laws have been enacted to clarify the appropriate sharing of information between those agencies, institutions, and professionals, the legislature finds further clarification will continue to aide [aid] and improve the care of those persons and augment public safety." [2011 c 305 § 1.]

74.09.300 Department to report penalties to appropriate licensing agency or disciplinary board. Whenever the secretary or director imposes a civil penalty under RCW 74.09.210, or terminates or suspends a provider's eligibility under RCW 74.09.290, he or she shall, if the provider is licensed pursuant to Titles 18, 70, or 71 RCW, give written notice of such imposition, termination, or suspension to the appropriate licensing agency or disciplinary board. [2011 1st sp.s. c 15 § 20; 1979 ex.s. c 152 § 11.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.470 Children's affordable health coverage—Authority duties. (1) Consistent with the goals established in RCW 74.09.402, through the apple health for kids program authorized in this section, the authority shall provide affordable health care coverage to children under the age of nineteen who reside in Washington state and whose family income at the time of enrollment is not greater than two hundred fifty percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services, and effective January 1, 2009, and only to the extent that funds are specifically appropriated therefor, to children whose family income is not greater than three hundred percent of the federal poverty level. In administering the program, the authority shall take such actions as may be necessary to ensure the receipt of federal financial participation under the medical assistance program, as codified at Title XIX of the federal social security act, the state children's health insurance program, as codified at Title XXI of the federal social security act, and any other federal funding sources that are now available or may become available in the future. The authority and the caseload forecast council shall estimate the anticipated caseload and costs of the program established in this section.

(2) The authority shall accept applications for enrollment for children's health care coverage; establish appropriate minimum-enrollment periods, as may be necessary; and determine eligibility based on current family income. The authority shall make eligibility determinations within the time frames for establishing eligibility for children on medical assistance, as defined by RCW 74.09.510. The application and annual renewal processes shall be designed to minimize administrative barriers for applicants and enrolled clients, and to minimize gaps in eligibility for families who are eligible for coverage. If a change in family income results in a change in the source of funding for coverage, the authority shall transfer the family members to the appropriate source of funding and notify the family with respect to any change in premium obligation, without a break in eligibility. The authority shall use the same eligibility redetermination and appeals procedures as those provided for children on medical

assistance programs. The authority shall modify its eligibility renewal procedures to lower the percentage of children failing to annually renew. The authority shall manage its outreach, application, and renewal procedures with the goals of: (a) Achieving year by year improvements in enrollment, enrollment rates, renewals, and renewal rates; (b) maximizing the use of existing program databases to obtain information related to earned and unearned income for purposes of eligibility determination and renewals, including, but not limited to, the basic food program, the child care subsidy program, federal social security administration programs, and the employment security department wage database; (c) streamlining renewal processes to rely primarily upon data matches, online submissions, and telephone interviews; and (d) implementing any other eligibility determination and renewal processes to allow the state to receive an enhanced federal matching rate and additional federal outreach funding available through the federal children's health insurance program reauthorization act of 2009 by January 2010. The department shall advise the governor and the legislature regarding the status of these efforts by September 30, 2009. The information provided should include the status of the department's efforts, the anticipated impact of those efforts on enrollment, and the costs associated with that enrollment.

(3) To ensure continuity of care and ease of understanding for families and health care providers, and to maximize the efficiency of the program, the amount, scope, and duration of health care services provided to children under this section shall be the same as that provided to children under medical assistance, as defined in RCW 74.09.520.

(4) The primary mechanism for purchasing health care coverage under this section shall be through contracts with managed health care systems as defined in RCW 74.09.522, subject to conditions, limitations, and appropriations provided in the biennial appropriations act. However, the authority shall make every effort within available resources to purchase health care coverage for uninsured children whose families have access to dependent coverage through an employer-sponsored health plan or another source when it is cost-effective for the state to do so, and the purchase is consistent with requirements of Title XIX and Title XXI of the federal social security act. To the extent allowable under federal law, the authority shall require families to enroll in available employer-sponsored coverage, as a condition of participating in the program established under this section, when it is cost-effective for the state to do so. Families who enroll in available employer-sponsored coverage under this section shall be accounted for separately in the annual report required by RCW 74.09.053.

(5)(a) To reflect appropriate parental responsibility, the authority shall develop and implement a schedule of premiums for children's health care coverage due to the authority from families with income greater than two hundred percent of the federal poverty level. For families with income greater than two hundred fifty percent of the federal poverty level, the premiums shall be established in consultation with the senate majority and minority leaders and the speaker and minority leader of the house of representatives. For children eligible for coverage under the federally funded children's health insurance program, Title XXI of the federal social security act, premiums shall be set at a reasonable level that

does not pose a barrier to enrollment. The amount of the premium shall be based upon family income and shall not exceed the premium limitations in Title XXI of the federal social security act. For children who are not eligible for coverage under the federally funded children's health insurance program, premiums shall be set every two years in an amount no greater than the average state-only share of the per capita cost of coverage in the state-funded children's health program.

(b) Premiums shall not be imposed on children in households at or below two hundred percent of the federal poverty level as articulated in RCW 74.09.055.

(c) Beginning no later than January 1, 2010, the authority shall offer families whose income is greater than three hundred percent of the federal poverty level the opportunity to purchase health care coverage for their children through the programs administered under this section without an explicit premium subsidy from the state. The design of the health benefit package offered to these children should provide a benefit package substantially similar to that offered in the apple health for kids program, and may differ with respect to cost-sharing, and other appropriate elements from that provided to children under subsection (3) of this section including, but not limited to, application of preexisting conditions, waiting periods, and other design changes needed to offer affordable coverage. The amount paid by the family shall be in an amount equal to the rate paid by the state to the managed health care system for coverage of the child, including any associated and administrative costs to the state of providing coverage for the child. Any pooling of the program enrollees that results in state fiscal impact must be identified and brought to the legislature for consideration.

(6) The authority shall undertake and continue a proactive, targeted outreach and education effort with the goal of enrolling children in health coverage and improving the health literacy of youth and parents. The authority shall collaborate with the department of social and health services, department of health, local public health jurisdictions, the office of the superintendent of public instruction, the department of early learning, health educators, health care providers, health carriers, community-based organizations, and parents in the design and development of this effort. The outreach and education effort shall include the following components:

(a) Broad dissemination of information about the availability of coverage, including media campaigns;

(b) Assistance with completing applications, and community-based outreach efforts to help people apply for coverage. Community-based outreach efforts should be targeted to the populations least likely to be covered;

(c) Use of existing systems, such as enrollment information from the free and reduced-price lunch program, the department of early learning child care subsidy program, the department of health's women, infants, and children program, and the early childhood education and assistance program, to identify children who may be eligible but not enrolled in coverage;

(d) Contracting with community-based organizations and government entities to support community-based outreach efforts to help families apply for coverage. These efforts should be targeted to the populations least likely to be

covered. The authority shall provide informational materials for use by government entities and community-based organizations in their outreach activities, and should identify any available federal matching funds to support these efforts;

(e) Development and dissemination of materials to engage and inform parents and families statewide on issues such as: The benefits of health insurance coverage; the appropriate use of health services, including primary care provided by health care practitioners licensed under chapters 18.71, 18.57, 18.36A, and 18.79 RCW, and emergency services; the value of a medical home, well-child services and immunization, and other preventive health services with linkages to department of health child profile efforts; identifying and managing chronic conditions such as asthma and diabetes; and the value of good nutrition and physical activity;

(f) An evaluation of the outreach and education efforts, based upon clear, cost-effective outcome measures that are included in contracts with entities that undertake components of the outreach and education effort;

(g) An implementation plan to develop online application capability that is integrated with the automated client eligibility system, and to develop data linkages with the office of the superintendent of public instruction for free and reduced-price lunch enrollment information and the department of early learning for child care subsidy program enrollment information.

(7) The authority shall take action to increase the number of primary care physicians providing dental disease preventive services including oral health screenings, risk assessment, family education, the application of fluoride varnish, and referral to a dentist as needed.

(8) The department shall monitor the rates of substitution between private-sector health care coverage and the coverage provided under this section. [2011 1st sp.s. c 33 § 2; 2011 1st sp.s. c 15 § 21; 2009 c 463 § 2; 2007 c 5 § 2.]

Reviser's note: Chapter 33, Laws of 2011 1st sp.s. took effect April 1, 2011, but amended 2011 1st sp.s. c 15, which took effect July 1, 2011.

Contingent effective dates—2011 1st sp.s. c 33: "(1) Section 1 of this act takes effect if section 21, chapter 15, Laws of 2011 1st sp. sess. is not enacted into law.

(2) Section 2 of this act takes effect if section 21, chapter 15, Laws of 2011 1st sp. sess. is enacted into law." [2011 1st sp.s. c 33 § 3.]

Effective date—2011 1st sp.s. c 33: "Subject to section 3 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 1, 2011." [2011 1st sp.s. c 33 § 4.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Findings—Intent—2009 c 463: "The legislature finds that substantial progress has been made toward achieving the equally important goals set in 2007 that all children in Washington state have health care coverage by 2010 and that child health outcomes improve. The legislature also finds that continued steps are necessary to reach the goals that all children in Washington state shall have access to the health services they need to be healthy and ready to learn and that key measures of child health outcomes will show year by year improvement. The legislature further finds that reaching these goals is integral to the state's ability to weather the current economic crisis. The recent reauthorization of the federal children's health insurance program provides additional opportunities for the state to reach these goals. In view of these important objectives, the legislature intends that the apple health for kids program be managed actively across administrations in the department of social and health services, and across state and local agencies, with clear accountability for achieving the intended program outcomes. The legislature further intends that the department continue the implementation of the apple

health for kids program with a commitment to fully utilizing the new program identity with appropriate materials." [2009 c 463 § 1.]

Short title—2009 c 463: "This act may be known and cited as the apple health for kids act." [2009 c 463 § 5.]

74.09.4701 Apple health for kids—Unemployment compensation. For apple health for kids, the department shall not count the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1202 when determining family income, eligibility, and payment levels. [2011 c 4 § 19.]

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

74.09.480 Performance measures—Provider rate increases—Report. (1) The authority, in collaboration with the department of health, department of social and health services, health carriers, local public health jurisdictions, children's health care providers including pediatricians, family practitioners, and pediatric subspecialists, community and migrant health centers, parents, and other purchasers, shall establish a concise set of explicit performance measures that can indicate whether children enrolled in the program are receiving health care through an established and effective medical home, and whether the overall health of enrolled children is improving. Such indicators may include, but are not limited to:

(a) Childhood immunization rates;

(b) Well child care utilization rates, including the use of behavioral and oral health screening, and validated, structured developmental screens using tools, that are consistent with nationally accepted pediatric guidelines and recommended administration schedule, once funding is specifically appropriated for this purpose;

(c) Care management for children with chronic illnesses;

(d) Emergency room utilization;

(e) Visual acuity and eye health;

(f) Preventive oral health service utilization; and

(g) Children's mental health status. In defining these measures the authority shall be guided by the measures provided in RCW 71.36.025.

Performance measures and targets for each performance measure must be established and monitored each biennium, with a goal of achieving measurable, improved health outcomes for the children of Washington state each biennium.

(2) Beginning in calendar year 2009, targeted provider rate increases shall be linked to quality improvement measures established under this section. The authority, in conjunction with those groups identified in subsection (1) of this section, shall develop parameters for determining criteria for increased payment, alternative payment methodologies, or other incentives for those practices and health plans that incorporate evidence-based practice and improve and achieve sustained improvement with respect to the measures.

(3) The department shall provide a report to the governor and the legislature related to provider performance on these measures, beginning in September 2010 for 2007 through 2009 and the authority shall provide the report biennially

thereafter. [2011 1st sp.s. c 15 § 22; 2009 c 463 § 4; 2007 c 5 § 4.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Findings—Intent—Short title—2009 c 463: See notes following RCW 74.09.470.

74.09.490 Children's mental health—Improving medication management and care coordination. (1) The authority, in consultation with the evidence-based practice institute established in RCW 71.24.061, shall develop and implement policies to improve prescribing practices for treatment of emotional or behavioral disturbances in children, improve the quality of children's mental health therapy through increased use of evidence-based and research-based practices and reduced variation in practice, improve communication and care coordination between primary care and mental health providers, and prioritize care in the family home or care which integrates the family where out-of-home placement is required.

(2) The authority shall identify those children with emotional or behavioral disturbances who may be at high risk due to off-label use of prescription medication, use of multiple medications, high medication dosage, or lack of coordination among multiple prescribing providers, and establish one or more mechanisms to evaluate the appropriateness of the medication these children are using, including but not limited to obtaining second opinions from experts in child psychiatry.

(3) The authority shall review the psychotropic medications of all children under five and establish one or more mechanisms to evaluate the appropriateness of the medication these children are using, including but not limited to obtaining second opinions from experts in child psychiatry.

(4) The authority shall track prescriptive practices with respect to psychotropic medications with the goal of reducing the use of medication.

(5) The authority shall encourage the use of cognitive behavioral therapies and other treatments which are empirically supported or evidence-based, in addition to or in the place of prescription medication where appropriate. [2011 1st sp.s. c 15 § 23; 2007 c 359 § 5.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Captions not law—2007 c 359: See note following RCW 71.36.005.

74.09.500 Medical assistance—Established. There is hereby established a new program of federal-aid assistance to be known as medical assistance to be administered by the authority. The authority is authorized to comply with the federal requirements for the medical assistance program provided in the social security act and particularly Title XIX of Public Law (89-97), as amended, in order to secure federal matching funds for such program. [2011 1st sp.s. c 15 § 24; 1979 c 141 § 343; 1967 ex.s. c 30 § 3.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

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74.09.510 Medical assistance—Eligibility. Medical assistance may be provided in accordance with eligibility requirements established by the authority, as defined in the social security Title XIX state plan for mandatory categorically needy persons and:

(1) Individuals who would be eligible for cash assistance except for their institutional status;

(2) Individuals who are under twenty-one years of age, who would be eligible for medicaid, but do not qualify as dependent children and who are in (a) foster care, (b) subsidized adoption, (c) a nursing facility or an intermediate care facility for persons with intellectual disabilities, or (d) inpatient psychiatric facilities;

(3) Individuals who:

(a) Are under twenty-one years of age;

(b) On or after July 22, 2007, were in foster care under the legal responsibility of the department or a federally recognized tribe located within the state; and

(c) On their eighteenth birthday, were in foster care under the legal responsibility of the department or a federally recognized tribe located within the state;

(4) Persons who are aged, blind, or disabled who: (a) Receive only a state supplement, or (b) would not be eligible for cash assistance if they were not institutionalized;

(5) Categorically eligible individuals who meet the income and resource requirements of the cash assistance programs;

(6) Individuals who are enrolled in managed health care systems, who have otherwise lost eligibility for medical assistance, but who have not completed a current six-month enrollment in a managed health care system, and who are eligible for federal financial participation under Title XIX of the social security act;

(7) Children and pregnant women allowed by federal statute for whom funding is appropriated;

(8) Working individuals with disabilities authorized under section 1902(a)(10)(A)(ii) of the social security act for whom funding is appropriated;

(9) Other individuals eligible for medical services under RCW 74.09.035 based on age, blindness, or disability and income and resources standards for medical care services and RCW 74.09.700 for whom federal financial participation is available under Title XIX of the social security act;

(10) Persons allowed by section 1931 of the social security act for whom funding is appropriated; and

(11) Women who: (a) Are under sixty-five years of age; (b) have been screened for breast and cervical cancer under the national breast and cervical cancer early detection program administered by the department of health or tribal entity and have been identified as needing treatment for breast or cervical cancer; and (c) are not otherwise covered by health insurance. Medical assistance provided under this subsection is limited to the period during which the woman requires treatment for breast or cervical cancer, and is subject to any conditions or limitations specified in the omnibus appropriations act. [2011 1st sp.s. c 36 § 9; 2011 1st sp.s. c 15 § 25; 2010 c 94 § 24; 2007 c 315 § 1. Prior: 2001 2nd sp.s. c 15 § 3; 2001 1st sp.s. c 4 § 1; prior: 1997 c 59 § 14; 1997 c 58 § 201; 1991 sp.s. c 8 § 8; 1989 1st ex.s. c 10 § 8; 1989 c 87 § 2; 1985 c 5 § 2; 1981 2nd ex.s. c 3 § 5; 1981 1st ex.s. c 6 § 20;

1981 c 8 § 19; 1971 ex.s. c 169 § 4; 1970 ex.s. c 60 § 1; 1967 ex.s. c 30 § 4.]

Reviser's note: This section was amended by 2011 1st sp.s. c 15 § 25 and by 2011 1st sp.s. c 36 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Purpose—2010 c 94: See note following RCW 44.04.280.

Conflict with federal requirements—2007 c 315: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2007 c 315 § 3.]

Findings—Intent—2001 2nd sp.s. c 15: See note following RCW 74.09.540.

Effective date—2001 1st sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 1st sp.s. c 4 § 2.]

Additional notes found at www.leg.wa.gov

74.09.515 Medical assistance—Coverage for youth released from confinement. (1) The authority shall adopt rules and policies providing that when youth who were enrolled in a medical assistance program immediately prior to confinement are released from confinement, their medical assistance coverage will be fully reinstated on the day of their release, subject to any expedited review of their continued eligibility for medical assistance coverage that is required under federal or state law.

(2) The authority, in collaboration with the department, county juvenile court administrators, and regional support networks, shall establish procedures for coordination between department field offices, juvenile rehabilitation administration institutions, and county juvenile courts that result in prompt reinstatement of eligibility and speedy eligibility determinations for youth who are likely to be eligible for medical assistance services upon release from confinement. Procedures developed under this subsection must address:

(a) Mechanisms for receiving medical assistance services' applications on behalf of confined youth in anticipation of their release from confinement;

(b) Expedient review of applications filed by or on behalf of confined youth and, to the extent practicable, completion of the review before the youth is released; and

(c) Mechanisms for providing medical assistance services' identity cards to youth eligible for medical assistance services immediately upon their release from confinement.

(3) For purposes of this section, "confined" or "confinement" means detained in a facility operated by or under contract with the department of social and health services, juvenile rehabilitation administration, or detained in a juvenile detention facility operated under chapter 13.04 RCW.

(4) The authority shall adopt standardized statewide screening and application practices and forms designed to facilitate the application of a confined youth who is likely to be eligible for a medical assistance program. [2011 1st sp.s. c 15 § 26; 2007 c 359 § 8.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Captions not law—2007 c 359: See note following RCW 71.36.005.

74.09.520 Medical assistance—Care and services included—Funding limitations. (1) The term "medical assistance" may include the following care and services subject to rules adopted by the authority or department: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and X-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary or director; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a child by a school district in a manner consistent with the requirements of this chapter. For the purposes of this section, neither the authority nor the department may cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services.

(2) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care for clients requiring health-related consultation for assessment and service planning may be reviewed by a nurse.

(c) The department shall determine by rule which clients have a health-related assessment or service planning need requiring registered nurse consultation or review. This definition may include clients that meet indicators or protocols for review, consultation, or visit.

(3) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for fund-

ing reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(4) Effective July 1, 1989, the authority shall offer hospice services in accordance with available funds.

(5) For Title XIX personal care services administered by aging and disability services administration of the department, the department shall contract with area agencies on aging:

(a) To provide case management services to individuals receiving Title XIX personal care services in their own home; and

(b) To reassess and reauthorize Title XIX personal care services or other home and community services as defined in RCW 74.39A.009 in home or in other settings for individuals consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive Title XIX personal care services or other home and community services as defined in RCW 74.39A.009; and

(ii) Who, at the time of reassessment and reauthorization, are receiving such services in their own home.

(6) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

(7) Subject to the availability of amounts appropriated for this specific purpose, the authority may offer medicare part D prescription drug copayment coverage to full benefit dual eligible beneficiaries. [2011 1st sp.s. c 15 § 27; 2007 c 3 § 1; 2004 c 141 § 2; 2003 c 279 § 1; 1998 c 245 § 145; 1995 1st sp.s. c 18 § 39; 1994 c 21 § 4. Prior: 1993 c 149 § 10; 1993 c 57 § 1; 1991 sp.s. c 8 § 9; prior: 1991 c 233 § 1; 1991 c 119 § 1; prior: 1990 c 33 § 594; 1990 c 25 § 1; prior: 1989 c 427 § 10; 1989 c 400 § 3; 1985 c 5 § 3; 1982 1st ex.s. c 19 § 4; 1981 1st ex.s. c 6 § 21; 1981 c 8 § 20; 1979 c 141 § 344; 1969 ex.s. c 173 § 11; 1967 ex.s. c 30 § 5.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Intent—1989 c 400: See note following RCW 28A.150.390.

Legislative confirmation of effect of 1994 c 21: RCW 43.20B.090.

Additional notes found at www.leg.wa.gov

74.09.521 Medical assistance—Program standards for mental health services for children. (1) To the extent that funds are specifically appropriated for this purpose the authority shall revise its medicaid healthy options managed care and fee-for-service program standards under medicaid, Title XIX of the federal social security act to improve access to mental health services for children who do not meet the regional support network access to care standards. The program standards shall be revised to allow outpatient therapy services to be provided by licensed mental health professionals, as defined in RCW 71.34.020, or by a mental health pro-

fessional regulated under Title 18 RCW who is under the direct supervision of a licensed mental health professional, and up to twenty outpatient therapy hours per calendar year, including family therapy visits integral to a child's treatment. This section shall be administered in a manner consistent with federal early and periodic screening, diagnosis, and treatment requirements related to the receipt of medically necessary services when a child's need for such services is identified through developmental screening.

(2) The authority and the children's mental health evidence-based practice institute established in RCW 71.24.061 shall collaborate to encourage and develop incentives for the use of prescribing practices and evidence-based and research-based treatment practices developed under RCW 74.09.490 by mental health professionals serving children under this section. [2011 1st sp.s. c 15 § 28; 2009 c 388 § 1; 2007 c 359 § 11.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Captions not law—2007 c 359: See note following RCW 71.36.005.

74.09.522 Medical assistance—Agreements with managed health care systems required for services to recipients of temporary assistance for needy families—Principles to be applied in purchasing managed health care—Expiration of subsections. (1) For the purposes of this section:

(a) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under this chapter and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(b) "Nonparticipating provider" means a person, health care provider, practitioner, facility, or entity, acting within their scope of practice, that does not have a written contract to participate in a managed health care system's provider network, but provides health care services to enrollees of programs authorized under this chapter whose health care services are provided by the managed health care system.

(2) The authority shall enter into agreements with managed health care systems to provide health care services to recipients of temporary assistance for needy families under the following conditions:

(a) Agreements shall be made for at least thirty thousand recipients statewide;

(b) Agreements in at least one county shall include enrollment of all recipients of temporary assistance for needy families;

(c) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act, recipients shall have a choice of systems in which to enroll and shall have the right to terminate their enrollment in a system: PROVIDED, That the authority may limit recipient termina-

tion of enrollment without cause to the first month of a period of enrollment, which period shall not exceed twelve months: AND PROVIDED FURTHER, That the authority shall not restrict a recipient's right to terminate enrollment in a system for good cause as established by the authority by rule;

(d) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, participating managed health care systems shall not enroll a disproportionate number of medical assistance recipients within the total numbers of persons served by the managed health care systems, except as authorized by the authority under federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(e)(i) In negotiating with managed health care systems the authority shall adopt a uniform procedure to enter into contractual arrangements, to be included in contracts issued or renewed on or after January 1, 2012, including:

(A) Standards regarding the quality of services to be provided;

(B) The financial integrity of the responding system;

(C) Provider reimbursement methods that incentivize chronic care management within health homes;

(D) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use; and

(E) Promoting provider participation in the program of training and technical assistance regarding care of people with chronic conditions described in RCW 43.70.533, including allocation of funds to support provider participation in the training, unless the managed care system is an integrated health delivery system that has programs in place for chronic care management.

(ii)(A) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(B) Contracts that include the items in (e)(i)(C) through (E) of this subsection must not exceed the rates that would be paid in the absence of these provisions;

(f) The authority shall seek waivers from federal requirements as necessary to implement this chapter;

(g) The authority shall, wherever possible, enter into prepaid capitation contracts that include inpatient care. However, if this is not possible or feasible, the authority may enter into prepaid capitation contracts that do not include inpatient care;

(h) The authority shall define those circumstances under which a managed health care system is responsible for out-of-plan services and assure that recipients shall not be charged for such services;

(i) Nothing in this section prevents the authority from entering into similar agreements for other groups of people eligible to receive services under this chapter; and

(j) The *department must consult with the federal center for medicare and medicaid innovation and seek funding opportunities to support health homes.

(3) The authority shall ensure that publicly supported community health centers and providers in rural areas, who show serious intent and apparent capability to participate as managed health care systems are seriously considered as contractors. The authority shall coordinate its managed care activities with activities under chapter 70.47 RCW.

(4) The authority shall work jointly with the state of Oregon and other states in this geographical region in order to develop recommendations to be presented to the appropriate federal agencies and the United States congress for improving health care of the poor, while controlling related costs.

(5) The legislature finds that competition in the managed health care marketplace is enhanced, in the long term, by the existence of a large number of managed health care system options for medicaid clients. In a managed care delivery system, whose goal is to focus on prevention, primary care, and improved enrollee health status, continuity in care relationships is of substantial importance, and disruption to clients and health care providers should be minimized. To help ensure these goals are met, the following principles shall guide the authority in its healthy options managed health care purchasing efforts:

(a) All managed health care systems should have an opportunity to contract with the authority to the extent that minimum contracting requirements defined by the authority are met, at payment rates that enable the authority to operate as far below appropriated spending levels as possible, consistent with the principles established in this section.

(b) Managed health care systems should compete for the award of contracts and assignment of medicaid beneficiaries who do not voluntarily select a contracting system, based upon:

(i) Demonstrated commitment to or experience in serving low-income populations;

(ii) Quality of services provided to enrollees;

(iii) Accessibility, including appropriate utilization, of services offered to enrollees;

(iv) Demonstrated capability to perform contracted services, including ability to supply an adequate provider network;

(v) Payment rates; and

(vi) The ability to meet other specifically defined contract requirements established by the authority, including consideration of past and current performance and participation in other state or federal health programs as a contractor.

(c) Consideration should be given to using multiple year contracting periods.

(d) Quality, accessibility, and demonstrated commitment to serving low-income populations shall be given significant weight in the contracting, evaluation, and assignment process.

(e) All contractors that are regulated health carriers must meet state minimum net worth requirements as defined in applicable state laws. The authority shall adopt rules establishing the minimum net worth requirements for contractors that are not regulated health carriers. This subsection does not limit the authority of the Washington state health care authority to take action under a contract upon finding that a contractor's financial status seriously jeopardizes the contractor's ability to meet its contract obligations.

(f) Procedures for resolution of disputes between the authority and contract bidders or the authority and contracting carriers related to the award of, or failure to award, a managed care contract must be clearly set out in the procurement document.

(6) The authority may apply the principles set forth in subsection (5) of this section to its managed health care pur-

chasing efforts on behalf of clients receiving supplemental security income benefits to the extent appropriate.

(7) A managed health care system shall pay a nonparticipating provider that provides a service covered under this chapter to the system's enrollee no more than the lowest amount paid for that service under the managed health care system's contracts with similar providers in the state.

(8) For services covered under this chapter to medical assistance or medical care services enrollees and provided on or after August 24, 2011, nonparticipating providers must accept as payment in full the amount paid by the managed health care system under subsection (7) of this section in addition to any deductible, coinsurance, or copayment that is due from the enrollee for the service provided. An enrollee is not liable to any nonparticipating provider for covered services, except for amounts due for any deductible, coinsurance, or copayment under the terms and conditions set forth in the managed health care system contract to provide services under this section.

(9) Pursuant to federal managed care access standards, 42 C.F.R. Sec. 438, managed health care systems must maintain a network of appropriate providers that is supported by written agreements sufficient to provide adequate access to all services covered under the contract with the *department, including hospital-based physician services. The *department will monitor and periodically report on the proportion of services provided by contracted providers and nonparticipating providers, by county, for each managed health care system to ensure that managed health care systems are meeting network adequacy requirements. No later than January 1st of each year, the *department will review and report its findings to the appropriate policy and fiscal committees of the legislature for the preceding state fiscal year.

(10) Subsections (7) through (9) of this section expire July 1, 2016. [2011 1st sp.s. c 15 § 29; 2011 1st sp.s. c 9 § 2; 2011 c 316 § 4. Prior: 1997 c 59 § 15; 1997 c 34 § 1; 1989 c 260 § 2; 1987 1st ex.s. c 5 § 21; 1986 c 303 § 2.]

Reviser's note: *(1) 2011 1st sp.s. c 15 transferred all powers, duties, and functions of the department of social and health services pertaining to the medical assistance program and the medicaid purchasing administration to the health care authority.

(2) This section was amended by 2011 c 316 § 4, 2011 1st sp.s. c 9 § 2, and by 2011 1st sp.s. c 15 § 29, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Findings—Intent—2011 1st sp.s. c 9: See note following RCW 70.47.020.

Legislative findings—Intent—1986 c 303: "(1) The legislature finds that:

- (a) Good health care for indigent persons is of importance to the state;
- (b) To ensure the availability of a good level of health care, efforts must be made to encourage cost consciousness on the part of providers and consumers, while maintaining medical assistance recipients within the mainstream of health care delivery;
- (c) Managed health care systems have been found to be effective in controlling costs while providing good health care services;
- (d) By enrolling medical assistance recipients within managed health care systems, the state's goal is to ensure that medical assistance recipients receive at least the same quality of care they currently receive.

(2) It is the intent of the legislature to develop and implement new strategies that promote the use of managed health care systems for medical assistance recipients by establishing prepaid capitated programs for both inpatient and out-patient services." [1986 c 303 § 1.]

Additional notes found at www.leg.wa.gov

74.09.5221 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.09.5222 Medical assistance—Section 1115 demonstration waiver request. (1) The authority shall submit a section 1115 demonstration waiver request to the federal department of health and human services to expand and revise the medical assistance program as codified in Title XIX of the federal social security act. The waiver request should be designed to ensure the broadest federal financial participation under Title XIX and XXI of the federal social security act. To the extent permitted under federal law, the waiver request should include the following components:

(a) Establishment of a single eligibility standard for low-income persons, including expansion of categorical eligibility to include childless adults. The authority shall request that the single eligibility standard be phased in such that incremental steps are taken to cover additional low-income parents and individuals over time, with the goal of offering coverage to persons with household income at or below two hundred percent of the federal poverty level;

(b) Establishment of a single seamless application and eligibility determination system for all state low-income medical programs included in the waiver. Applications may be electronic and may include an electronic signature for verification and authentication. Eligibility determinations should maximize federal financing where possible;

(c) The delivery of all low-income coverage programs as a single program, with a common core benefit package that may be similar to the basic health benefit package or an alternative benefit package approved by the secretary of the federal department of health and human services, including the option of supplemental coverage for select categorical groups, such as children, and individuals who are aged, blind, and disabled;

(d) A program design to include creative and innovative approaches such as: Coverage for preventive services with incentives to use appropriate preventive care; enhanced medical home reimbursement and bundled payment methodologies; cost-sharing options; use of care management and care coordination programs to improve coordination of medical and behavioral health services; application of an innovative predictive risk model to better target care management services; and mandatory enrollment in managed care, as may be necessary;

(e) The ability to impose enrollment limits or benefit design changes for eligibility groups that were not eligible under the Title XIX state plan in effect on the date of submission of the waiver application;

(f) A premium assistance program whereby employers can participate in coverage options for employees and dependents of employees otherwise eligible under the waiver. The waiver should make every effort to maximize enrollment in employer-sponsored health insurance when it is cost-effective for the state to do so, and the purchase is consistent with the requirements of Titles XIX and XXI of the federal social security act. To the extent allowable under federal law, the

authority shall require enrollment in available employer-sponsored coverage as a condition of eligibility for coverage under the waiver; and

(g) The ability to share savings that might accrue to the federal medicare program, Title XVIII of the federal social security act, from improved care management for persons who are eligible for both medicare and medicaid. Through the waiver application process, the authority shall determine whether the state could serve, directly or by contract, as a medicare special needs plan for persons eligible for both medicare and medicaid.

(2) The authority shall hold ongoing stakeholder discussions as it is developing the waiver request, and provide opportunities for public review and comment as the request is being developed.

(3) The authority shall identify statutory changes that may be necessary to ensure successful and timely implementation of the waiver request as submitted to the federal department of health and human services as the apple health program for adults.

(4) The legislature must authorize implementation of any waiver approved by the federal department of health and human services under this section. [2011 1st sp.s. c 15 § 30; 2009 c 545 § 4.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Findings—2009 c 545: See note following RCW 43.06.155.

74.09.5225 Medical assistance—Payments for services provided by rural hospitals. (1) Payments for recipients eligible for medical assistance programs under this chapter for services provided by hospitals, regardless of the beneficiary's managed care enrollment status, shall be made based on allowable costs incurred during the year, when services are provided by a rural hospital certified by the centers for medicare and medicaid services as a critical access hospital. Any additional payments made by the authority for the healthy options program shall be no more than the additional amounts per service paid under this section for other medical assistance programs.

(2) Beginning on July 24, 2005, a moratorium shall be placed on additional hospital participation in critical access hospital payments under this section. However, rural hospitals that applied for certification to the centers for medicare and medicaid services prior to January 1, 2005, but have not yet completed the process or have not yet been approved for certification, remain eligible for medical assistance payments under this section. [2011 1st sp.s. c 15 § 31; 2005 c 383 § 1; 2001 2nd sp.s. c 2 § 2.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Findings—2001 2nd sp.s. c 2: "The legislature finds that promoting a financially viable health care system in all parts of the state is a paramount interest. The health care financing administration has recognized the crucial role that hospitals play in providing care in rural areas by creating the critical access hospital program to allow small, rural hospitals that qualify to receive reasonable cost-based reimbursement for medicare services. The legislature further finds that creating a similar reimbursement system for the state's medical assistance programs in small, rural hospitals that qualify will help assure the long-term financial viability of the rural health system in those communities." [2001 2nd sp.s. c 2 § 1.]

74.09.5227 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.09.5229 Primary care health homes—Chronic care management—Findings—Intent. The legislature finds that:

(1) Health care costs are growing rapidly, exceeding the consumer price index year after year. Consequently, state health programs are capturing a growing share of the state budget, even as state revenues have declined. Sustaining these critical health programs will require actions to effectively contain health care cost increases in the future; and

(2) The primary care health home model has been demonstrated to successfully constrain costs, while improving quality of care. Chronic care management, occurring within a primary care health home, has been shown to be especially effective at reducing costs and improving quality. However, broad adoption of these models has been impeded by a fee-for-service system that reimburses volume of services and does not adequately support important primary care health home services, such as case management and patient outreach. Furthermore, successful implementation will require a broad adoption effort by private and public payers, in coordination with providers.

Therefore the legislature intends to promote the adoption of primary care health homes for children and adults and, within them, advance the practice of chronic care management to improve health outcomes and reduce unnecessary costs. To facilitate the best coordination and patient care, primary care health homes are encouraged to collaborate with other providers currently outside the medical insurance model. Successful chronic care management for persons receiving long-term care services in addition to medical care will require close coordination between primary care providers, long-term care workers, and other long-term care service providers, including area agencies on aging. Primary care providers also should consider oral health coordination through collaboration with dental providers and, when possible, delivery of oral health prevention services. The legislature also intends that the methods and approach of the primary care health home become part of basic primary care medical education. [2011 c 316 § 1.]

74.09.530 Medical assistance—Powers and duties of authority. (1)(a) The authority is designated as the single state agency for purposes of Title XIX of the federal social security act.

(b) The amount and nature of medical assistance and the determination of eligibility of recipients for medical assistance shall be the responsibility of the authority.

(c) The authority shall establish reasonable standards of assistance and resource and income exemptions which shall be consistent with the provisions of the social security act and federal regulations for determining eligibility of individuals for medical assistance and the extent of such assistance to the extent that funds are available from the state and federal government. The authority shall not consider resources in determining continuing eligibility for recipients eligible under section 1931 of the social security act.

(d) The authority is authorized to collaborate with other state or local agencies and nonprofit organizations in carrying

out its duties under this chapter and, to the extent appropriate, may enter into agreements with such other entities.

(2) Individuals eligible for medical assistance under RCW 74.09.510(3) shall be transitioned into coverage under that subsection immediately upon their termination from coverage under RCW 74.09.510(2)(a). The authority shall use income eligibility standards and eligibility determinations applicable to children placed in foster care. The authority shall provide information regarding basic health plan enrollment and shall offer assistance with the application and enrollment process to individuals covered under RCW 74.09.510(3) who are approaching their twenty-first birthday. [2011 1st sp.s. c 15 § 32; 2007 c 315 § 2; 2000 c 218 § 2; 1979 c 141 § 345; 1967 ex.s. c 30 § 6.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Conflict with federal requirements—2007 c 315: See note following RCW 74.09.510.

74.09.540 Medical assistance—Working individuals with disabilities—Intent. (1) It is the intent of the legislature to remove barriers to employment for individuals with disabilities by providing medical assistance to working individuals with disabilities through a buy-in program in accordance with section 1902(a)(10)(A)(ii) of the social security act and eligibility and cost-sharing requirements established by the authority.

(2) The authority shall establish income, resource, and cost-sharing requirements for the buy-in program in accordance with federal law and any conditions or limitations specified in the omnibus appropriations act. The authority shall establish and modify eligibility and cost-sharing requirements in order to administer the program within available funds. The authority shall make every effort to coordinate benefits with employer-sponsored coverage available to the working individuals with disabilities receiving benefits under this chapter. [2011 1st sp.s. c 15 § 33; 2001 2nd sp.s. c 15 § 2.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Findings—Intent—2001 2nd sp.s. c 15: "The legislature finds that individuals with disabilities face many barriers and disincentives to employment. Individuals with disabilities are often unable to obtain health insurance that provides the services and supports necessary to allow them to live independently and enter or rejoin the workforce. The legislature finds that there is a compelling public interest in eliminating barriers to work by continuing needed health care coverage for individuals with disabilities who enter and maintain employment.

The legislature intends to strengthen the state's policy of supporting individuals with disabilities in leading fully productive lives by supporting the implementation of the federal ticket to work and work incentives improvement act of 1999, Public Law 106-170. This shall include improving incentives to work by continuing coverage for health care and support services, by seeking federal funding for innovative programs, and by exploring options which provide individuals with disabilities a choice in receiving services needed to obtain and maintain employment." [2001 2nd sp.s. c 15 § 1.]

74.09.555 Medical assistance—Reinstatement upon release from confinement—Expedited eligibility determinations. (1) The authority shall adopt rules and policies providing that when persons with a mental disorder, who were

enrolled in medical assistance immediately prior to confinement, are released from confinement, their medical assistance coverage will be fully reinstated on the day of their release, subject to any expedited review of their continued eligibility for medical assistance coverage that is required under federal or state law.

(2) The authority, in collaboration with the Washington association of sheriffs and police chiefs, the department of corrections, and the regional support networks, shall establish procedures for coordination between the authority and department field offices, institutions for mental disease, and correctional institutions, as defined in RCW 9.94.049, that result in prompt reinstatement of eligibility and speedy eligibility determinations for persons who are likely to be eligible for medical assistance services upon release from confinement. Procedures developed under this subsection must address:

(a) Mechanisms for receiving medical assistance services applications on behalf of confined persons in anticipation of their release from confinement;

(b) Expedited review of applications filed by or on behalf of confined persons and, to the extent practicable, completion of the review before the person is released;

(c) Mechanisms for providing medical assistance services identity cards to persons eligible for medical assistance services immediately upon their release from confinement; and

(d) Coordination with the federal social security administration, through interagency agreements or otherwise, to expedite processing of applications for federal supplemental security income or social security disability benefits, including federal acceptance of applications on behalf of confined persons.

(3) Where medical or psychiatric examinations during a person's confinement indicate that the person is disabled, the correctional institution or institution for mental diseases shall provide the authority with that information for purposes of making medical assistance eligibility and enrollment determinations prior to the person's release from confinement. The authority shall, to the maximum extent permitted by federal law, use the examination in making its determination whether the person is disabled and eligible for medical assistance.

(4) For purposes of this section, "confined" or "confinement" means incarcerated in a correctional institution, as defined in RCW 9.94.049, or admitted to an institute for mental disease, as defined in 42 C.F.R. part 435, Sec. 1009 on July 24, 2005.

(5) For purposes of this section, "likely to be eligible" means that a person:

(a) Was enrolled in medicaid or supplemental security income or the medical care services program immediately before he or she was confined and his or her enrollment was terminated during his or her confinement; or

(b) Was enrolled in medicaid or supplemental security income or the medical care services program at any time during the five years before his or her confinement, and medical or psychiatric examinations during the person's confinement indicate that the person continues to be disabled and the disability is likely to last at least twelve months following release.

(6) The economic services administration within the department shall adopt standardized statewide screening and application practices and forms designed to facilitate the application of a confined person who is likely to be eligible for medicaid. [2011 1st sp.s. c 36 § 32; 2011 1st sp.s. c 15 § 34; 2010 1st sp.s. c 8 § 30; 2005 c 503 § 12.]

Reviser's note: This section was amended by 2011 1st sp.s. c 15 § 34 and by 2011 1st sp.s. c 36 § 32, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Correction of references—Savings—Severability—2005 c 503: See notes following RCW 71.24.015.

74.09.565 Medical assistance for institutionalized persons—Treatment of income between spouses. (1) An agreement between spouses transferring or assigning rights to future income from one spouse to the other shall be invalid for purposes of determining eligibility for medical assistance or the limited casualty program for the medically needy, but this subsection does not affect agreements between spouses transferring or assigning resources, and income produced by transferred or assigned resources shall continue to be recognized as the separate income of the transferee.

(2) In determining eligibility for medical assistance or the limited casualty program for the medically needy for a married person in need of institutional care, or care under home and community-based waivers as defined in Title XIX of the social security act, if the community income received in the name of the nonapplicant spouse exceeds the community income received in the name of the applicant spouse, the applicant's interest in that excess shall be considered unavailable to the applicant.

(3) The department or authority, as appropriate, shall adopt rules consistent with the provisions of section 1924 of the social security act entitled "Treatment of Income and Resources for Certain Institutionalized Spouses," in determining the allocation of income between an institutionalized and community spouse.

(4) The department or authority, as appropriate, shall establish the monthly maintenance needs allowance for the community spouse up to the maximum amount allowed by state appropriation or within available funds and permitted in section 1924 of the social security act. The total monthly needs allowance shall not exceed one thousand five hundred dollars, subject to adjustment provided in section 1924 of the social security act. [2011 1st sp.s. c 15 § 35; 1989 c 87 § 4.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

74.09.575 Medical assistance for institutionalized persons—Treatment of resources. (1) The department or authority, as appropriate, shall promulgate rules consistent

with the treatment of resources provisions of section 1924 of the social security act in determining the allocation of resources between the institutionalized and community spouse.

(2) In the interest of supporting the community spouse the department or authority, as appropriate, shall allow the maximum resource allowance amount permissible under the social security act for the community spouse for persons institutionalized before August 1, 2003.

(3) For persons institutionalized on or after August 1, 2003, the department or authority, as appropriate, in the interest of supporting the community spouse, shall allow up to a maximum of forty thousand dollars in resources for the community spouse. For the fiscal biennium beginning July 1, 2005, and each fiscal biennium thereafter, the maximum resource allowance amount for the community spouse shall be adjusted for economic trends and conditions by increasing the amount allowable by the consumer price index as published by the federal bureau of labor statistics. However, in no case shall the amount allowable exceed the maximum resource allowance permissible under the social security act. [2011 1st sp.s. c 15 § 36; 2003 1st sp.s. c 28 § 1; 1989 c 87 § 5.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2003 1st sp.s. c 28: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 1st sp.s. c 28 § 2.]

Additional notes found at www.leg.wa.gov

74.09.585 Medical assistance for institutionalized persons—Period of ineligibility for transfer of resources.

(1) The department or authority, as appropriate, shall establish standards consistent with section 1917 of the social security act in determining the period of ineligibility for medical assistance due to the transfer of resources.

(2) There shall be no penalty imposed for the transfer of assets that are excluded in a determination of the individual's eligibility for medicaid to the extent such assets are protected by the long-term care insurance policy or contract pursuant to chapter 48.85 RCW.

(3) The department or authority, as appropriate, may waive a period of ineligibility if the department or authority determines that denial of eligibility would work an undue hardship. [2011 1st sp.s. c 15 § 37; 1995 1st sp.s. c 18 § 81; 1989 c 87 § 7.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

74.09.595 Medical assistance for institutionalized persons—Due process procedures.

The department or authority, as appropriate, shall in compliance with section 1924 of the social security act adopt procedures which provide due process for institutionalized or community spouses who request a fair hearing as to the valuation of resources, the amount of the community spouse resource allowance, or the monthly maintenance needs allowance. [2011 1st sp.s. c 15 § 38; 1989 c 87 § 8.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

74.09.653 Drug reimbursement policy recommendations. A committee or council required by federal law, within the health care authority, that makes policy recommendations regarding reimbursement for drugs under the requirements of federal law or regulations is subject to chapters 42.30 and 42.32 RCW. [2011 1st sp.s. c 15 § 60; 1997 c 430 § 2. Formerly RCW 43.20A.365.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.655 Smoking cessation assistance. The authority shall provide coverage under this chapter for smoking cessation counseling services, as well as prescription and non-prescription agents when used to promote smoking cessation, so long as such agents otherwise meet the definition of "covered outpatient drug" in 42 U.S.C. Sec. 1396r-8(k). However, the authority may initiate an individualized inquiry and determine and implement by rule appropriate coverage limitations as may be required to encourage the use of effective, evidence-based services and prescription and nonprescription agents. The authority shall track per-capita expenditures for a cohort of clients that receive smoking cessation benefits, and submit a cost-benefit analysis to the legislature on or before January 1, 2012. [2011 1st sp.s. c 15 § 39; 2008 c 245 § 1.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.657 Findings—Family planning services expansion. The legislature finds that:

(1) Over half of all births in Washington state are covered by public programs;

(2) Research has demonstrated that children of unintended pregnancies receive less prenatal care and are at higher risk for premature birth, low birth weight, neurological disorders, and poor academic performance;

(3) In Washington state, over fifty percent of unintended pregnancies occur in women age twenty-five years and older;

(4) Washington state's take charge program has been successful in helping women avoid unintended pregnancies; however, when the caseload declined due to federally mandated changes, the rate of unintended pregnancies increased dramatically;

(5) Expanding family planning services to cover women to two hundred fifty percent of the federal poverty level would align that program's eligibility standard with income eligibility for publicly funded maternity care service; and

(6) Such an expansion would reduce unintended pregnancies and associated costs to the state. [2011 1st sp.s. c 41 § 1.]

Funding reduction—2011 1st sp.s. c 41: "Upon implementation of the expansion directed in RCW 74.09.659, the office of financial management shall reduce general fund—state allotments for the medical assistance program by one million five hundred thousand dollars for fiscal year 2012 and by two million three hundred fifty thousand dollars for fiscal year 2013. The

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amounts reduced from allotments shall be placed in reserve status and remain unexpended." [2011 1st sp.s. c 41 § 3.]

74.09.658 Home health—Reimbursement—Telemedicine. (1) The home health program shall require registered nurse oversight and intervention, as appropriate. In-person contact between a home health care registered nurse and a patient is not required under the state's medical assistance program for home health services that are: (a) Delivered with the assistance of telemedicine and (b) otherwise eligible for reimbursement as a medically necessary skilled home health nursing visit under the program.

(2) The department or authority, as appropriate, in consultation with home health care service providers shall develop reimbursement rules and, in rule, define the requirements that must be met for a reimbursable skilled nursing visit when services are rendered without a face-to-face visit and are assisted by telemedicine.

(3)(a) The department or authority, as appropriate, shall establish the reimbursement rate for skilled home health nursing services delivered with the assistance of telemedicine that meet the requirements of a reimbursable visit as defined by the department or authority, as appropriate.

(b) Reimbursement is not provided for purchase or lease of telemedicine equipment.

(4) Any home health agency licensed under chapter 70.127 RCW and eligible for reimbursement under the medical programs authorized under this chapter may be reimbursed for services under this section if the service meets the requirements for a reimbursable skilled nursing visit.

(5) Nothing in this section shall be construed to alter the scope of practice of any home health care services provider or authorizes the delivery of home health care services in a setting or manner not otherwise authorized by law.

(6) The use of telemedicine is not intended to replace registered nurse health care visits when necessary.

(7) For the purposes of this section, "telemedicine" means the use of telemonitoring to enhance the delivery of certain home health medical services through:

(a) The provision of certain education related to health care services using audio, video, or data communication instead of a face-to-face visit; or

(b) The collection of clinical data and the transmission of such data between a patient at a distant location and the home health provider through electronic processing technologies. Objective clinical data that may be transmitted includes, but is not limited to, weight, blood pressure, pulse, respirations, blood glucose, and pulse oximetry. [2011 1st sp.s. c 15 § 40; 2009 c 326 § 1.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.659 Family planning waiver program request. (1) The authority shall continue to submit applications for the family planning waiver program.

(2) The authority shall submit a request to the federal department of health and human services to amend the current family planning waiver program as follows:

(a) Provide coverage for sexually transmitted disease testing and treatment;

(b) Return to the eligibility standards used in 2005 including, but not limited to, citizenship determination based on declaration or matching with federal social security databases, insurance eligibility standards comparable to 2005, and confidential service availability for minors and survivors of domestic and sexual violence; and

(c) By September 30, 2011, submit an application to increase income eligibility to two hundred fifty percent of the federal poverty level, to correspond with income eligibility for publicly funded maternity care services. [2011 1st sp.s. c 41 § 2; 2011 1st sp.s. c 15 § 41; 2009 c 545 § 5.]

Reviser's note: This section was amended by 2011 1st sp.s. c 15 § 41 and by 2011 1st sp.s. c 41 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Funding reduction—2011 1st sp.s. c 41: See note following RCW 74.09.657.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Findings—2009 c 545: See note following RCW 43.06.155.

74.09.700 Medical care—Limited casualty program.

(1) To the extent of available funds and subject to any conditions placed on appropriations made for this purpose, medical care may be provided under the limited casualty program to persons not eligible for medical assistance or medical care services who are medically needy as defined in the social security Title XIX state plan and medical indigents in accordance with eligibility requirements established by the authority. The eligibility requirements may include minimum levels of incurred medical expenses. This includes residents of nursing facilities, residents of intermediate care facilities for persons with intellectual disabilities, and individuals who are otherwise eligible for section 1915(c) of the federal social security act home and community-based waiver services, administered by the department who are aged, blind, or disabled as defined in Title XVI of the federal social security act and whose income exceeds three hundred percent of the federal supplement security income benefit level.

(2) Determination of the amount, scope, and duration of medical coverage under the limited casualty program shall be the responsibility of the authority, subject to the following:

(a) Only the following services may be covered:

(i) For persons who are medically needy as defined in the social security Title XIX state plan: Inpatient and outpatient hospital services, and home and community-based waiver services;

(ii) For persons who are medically needy as defined in the social security Title XIX state plan, and for persons who are medical indigents under the eligibility requirements established by the authority: Rural health clinic services; physicians' and clinic services; prescribed drugs, dentures, prosthetic devices, and eyeglasses; nursing facility services; and intermediate care facility services for persons with intellectual disabilities; home health services; hospice services; other laboratory and X-ray services; rehabilitative services, including occupational therapy; medically necessary transportation; and other services for which funds are specifically provided in the omnibus appropriations act;

(b) Medical care services provided to the medically indigent and received no more than seven days prior to the date of application shall be retroactively certified and approved for payment on behalf of a person who was otherwise eligible at the time the medical services were furnished: PROVIDED, That eligible persons who fail to apply within the seven-day time period for medical reasons or other good cause may be retroactively certified and approved for payment.

(3) The authority shall establish standards of assistance and resource and income exemptions. All nonexempt income and resources of limited casualty program recipients shall be applied against the cost of their medical care services. [2011 1st sp.s. c 15 § 42; 2010 c 94 § 25; 2001 c 269 § 1; 1993 c 57 § 2. Prior: 1991 sp.s. c 9 § 7; 1991 sp.s. c 8 § 10; 1991 c 233 § 2; 1989 c 87 § 3; 1985 c 5 § 4; 1983 1st ex.s. c 43 § 1; 1982 1st ex.s. c 19 § 1; 1981 2nd ex.s. c 10 § 6; 1981 2nd ex.s. c 3 § 6; 1981 1st ex.s. c 6 § 22.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Purpose—2010 c 94: See note following RCW 44.04.280.

Additional notes found at www.leg.wa.gov

74.09.710 Chronic care management programs—Medical homes—Definitions. (1) The authority, in collaboration with the department of health and the department of social and health services, shall:

(a) Design and implement medical homes for its aged, blind, and disabled clients in conjunction with chronic care management programs to improve health outcomes, access, and cost-effectiveness. Programs must be evidence based, facilitating the use of information technology to improve quality of care, must acknowledge the role of primary care providers and include financial and other supports to enable these providers to effectively carry out their role in chronic care management, and must improve coordination of primary, acute, and long-term care for those clients with multiple chronic conditions. The authority shall consider expansion of existing medical home and chronic care management programs and build on the Washington state collaborative initiative. The authority shall use best practices in identifying those clients best served under a chronic care management model using predictive modeling through claims or other health risk information; and

(b) Evaluate the effectiveness of current chronic care management efforts in the authority and the department, comparison to best practices, and recommendations for future efforts and organizational structure to improve chronic care management.

(2) For purposes of this section:

(a) "Medical home" means a site of care that provides comprehensive preventive and coordinated care centered on the patient needs and assures high quality, accessible, and efficient care.

(b) "Chronic care management" means the authority's program that provides care management and coordination activities for medical assistance clients determined to be at risk for high medical costs. "Chronic care management" provides education and training and/or coordination that assist program participants in improving self-management skills to improve health outcomes and reduce medical costs by edu-

cating clients to better utilize services. [2011 1st sp.s. c 15 § 43; 2007 c 259 § 4.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

74.09.715 Access to dental care. Within funds appropriated for this purpose, the authority shall establish two dental access projects to serve seniors and other adults who are categorically needy blind or disabled. The projects shall provide:

(1) Enhanced reimbursement rates for certified dentists for specific procedures, to begin no sooner than July 1, 2009;

(2) Reimbursement for trained medical providers for preventive oral health services, to begin no sooner than July 1, 2009;

(3) Training, development, and implementation through a partnership with the University of Washington school of dentistry;

(4) Local program coordination including outreach and case management; and

(5) An evaluation that measures the change in utilization rates and cost savings. [2011 1st sp.s. c 15 § 44; 2008 c 146 § 13.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Findings—Intent—Severability—2008 c 146: See notes following RCW 74.41.040.

74.09.720 Prevention of blindness program. (1) A prevention of blindness program is hereby established in the authority to provide prompt, specialized medical eye care, including assistance with costs when necessary, for conditions in which sight is endangered or sight can be restored or significantly improved. The authority shall adopt rules concerning program eligibility, levels of assistance, and the scope of services.

(2) The authority shall employ on a part-time basis an ophthalmological and/or an optometrical consultant to provide liaison with participating eye physicians and to review medical recommendations made by an applicant's eye physician to determine whether the proposed services meet program standards.

(3) The authority and the department of services for the blind shall formulate a cooperative agreement concerning referral of clients between the two agencies and the coordination of policies and services. [2011 1st sp.s. c 15 § 45; 1983 c 194 § 26.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

74.09.725 Prostate cancer screening. The authority shall provide coverage for prostate cancer screening under this chapter, provided that the screening is delivered upon the recommendation of the patient's physician, advanced registered nurse practitioner, or physician assistant. [2011 1st sp.s. c 15 § 46; 2006 c 367 § 8.]

[2011 RCW Supp—page 1468]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.730 Disproportionate share hospital adjustment. In establishing Title XIX payments for inpatient hospital services:

(1) To the extent funds are appropriated specifically for this purpose, and subject to any conditions placed on appropriations made for this purpose, the authority shall provide a disproportionate share hospital adjustment considering the following components:

(a) A low-income care component based on a hospital's medicaid utilization rate, its low-income utilization rate, its provision of obstetric services, and other factors authorized by federal law;

(b) A medical indigency care component based on a hospital's services to persons who are medically indigent; and

(c) A state-only component, to be paid from available state funds to hospitals that do not qualify for federal payments under (b) of this subsection, based on a hospital's services to persons who are medically indigent;

(2) The payment methodology for disproportionate share hospitals shall be specified by the authority in regulation.

(3) Nothing in this section shall be construed as a right or an entitlement by any hospital to any payment from the authority. [2011 1st sp.s. c 15 § 47; 2009 c 538 § 1; 1991 sp.s. c 9 § 8; 1989 c 260 § 1; 1987 1st ex.s. c 5 § 20.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

74.09.741 Adjudicative proceedings. (1) The following persons have the right to an adjudicative proceeding:

(a) Any applicant or recipient who is aggrieved by a decision of the authority or an authorized agency of the authority; or

(b) A current or former recipient who is aggrieved by the authority's claim that he or she owes a debt for overpayment of assistance.

(2) For purposes of this section:

(a) "Applicant" means any person who has made a request, or on behalf of whom a request has been made to the authority for any medical services program established under chapter 74.09 RCW.

(b) "Recipient" means a person who is receiving benefits from the authority for any medical services program established in this chapter.

(3) An applicant or recipient has no right to an adjudicative proceeding when the sole basis for the authority's decision is a federal or state law requiring an assistance adjustment for a class of applicants or recipients.

(4) An applicant or recipient may file an application for an adjudicative proceeding with either the authority or the department and must do so within ninety calendar days after receiving notice of the aggrieving decision. The authority shall determine which agency is responsible for representing the state of Washington in the hearing, in accordance with agreements entered pursuant to RCW 41.05.021.

(5)(a) The adjudicative proceeding is governed by the administrative procedure act, chapter 34.05 RCW, and this subsection. The following requirements shall apply to adjudicative proceedings in which an appellant seeks review of decisions made by more than one agency. When an appellant files a single application for an adjudicative proceeding seeking review of decisions by more than one agency, this review shall be conducted initially in one adjudicative proceeding. The presiding officer may sever the proceeding into multiple proceedings on the motion of any of the parties, when:

(i) All parties consent to the severance; or

(ii) Either party requests severance without another party's consent, and the presiding officer finds there is good cause for severing the matter and that the proposed severance is not likely to prejudice the rights of an appellant who is a party to any of the severed proceedings.

(b) If there are multiple adjudicative proceedings involving common issues or parties where there is one appellant and both the authority and the department are parties, upon motion of any party or upon his or her own motion, the presiding officer may consolidate the proceedings if he or she finds that the consolidation is not likely to prejudice the rights of the appellant who is a party to any of the consolidated proceedings.

(c) The adjudicative proceeding shall be conducted at the local community services office or other location in Washington convenient to the applicant or recipient and, upon agreement by the applicant or recipient, may be conducted telephonically.

(d) The applicant or recipient, or his or her representative, has the right to inspect his or her file from the authority and, upon request, to receive copies of authority documents relevant to the proceedings free of charge.

(e) The applicant or recipient has the right to a copy of the audio recording of the adjudicative proceeding free of charge.

(f) If a final adjudicative order is issued in favor of an applicant, medical services benefits must be provided from the date of earliest eligibility, the date of denial of the application for assistance, or forty-five days following the date of application, whichever is soonest. If a final adjudicative order is issued in favor of a recipient, medical services benefits must be provided from the effective date of the authority's decision.

(g) The authority is limited to recovering an overpayment arising from assistance being continued pending the adjudicative proceeding to the amount recoverable up to the sixtieth day after the director's receipt of the application for an adjudicative proceeding.

(6) If the director requires that a party seek administrative review of an initial order to an adjudicative proceeding governed by this section, in order for the party to exhaust administrative remedies pursuant to RCW 34.05.534, the director shall adopt and implement rules in accordance with this subsection.

(a) The director, in consultation with the secretary, shall adopt rules to create a process for parties to seek administrative review of initial orders issued pursuant to RCW 34.05.461 in adjudicative proceedings governed by this subsection when multiple agencies are parties.

(b) This process shall seek to minimize any procedural complexities imposed on appellants that result from multiple agencies being parties to the matter, without prejudicing the rights of parties who are public assistance applicants or recipients.

(c) Nothing in this subsection shall impose or modify any legal requirement that a party seek administrative review of initial orders in order to exhaust administrative remedies pursuant to RCW 34.05.534.

(7) This subsection only applies to an adjudicative proceeding in which the appellant is an applicant for or recipient of medical services programs established under this chapter and the issue is his or her eligibility or ineligibility due to the assignment or transfer of a resource. The burden is on the authority or its authorized agency to prove by a preponderance of the evidence that the person knowingly and willingly assigned or transferred the resource at less than market value for the purpose of qualifying or continuing to qualify for medical services programs established under this chapter. If the prevailing party in the adjudicative proceeding is the applicant or recipient, he or she is entitled to reasonable attorneys' fees.

(8) When an applicant or recipient files a petition for judicial review as provided in RCW 34.05.514 of an adjudicative order entered with respect to the medical services program, no filing fee may be collected from the person and no bond may be required on any appeal. In the event that the superior court, the court of appeals, or the supreme court renders a decision in favor of the applicant or recipient, the person is entitled to reasonable attorneys' fees and costs. If a decision of the court is made in favor of an applicant, assistance shall be paid from the date of earliest eligibility, the date of the denial of the application for assistance, or forty-five days following the date of application, whichever is soonest. If a decision of the court is made in favor of a recipient, assistance shall be paid from the effective date of the authority's decision.

(9) The provisions of RCW 74.08.080 do not apply to adjudicative proceedings requested or conducted with respect to the medical services program pursuant to this section.

(10) The authority shall adopt any rules it deems necessary to implement this section. [2011 1st sp.s. c 15 § 53.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.755 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.09.756 Medicaid and state children's health insurance program demonstration project. (1) By October 1, 2011, the department shall submit a request to the centers for medicare and medicaid services' innovation center and, if necessary, a request under section 1115 of the social security act, to implement a medicaid and state children's health insurance program demonstration project. The demonstration project shall be designed to achieve the broadest federal financial participation and, to the extent permitted under federal law, shall authorize:

(a) Establishment of base-year, eligibility group per capita payments, with maximum flexibility provided to the state

for managing the health care trend and provisions for shared savings if per capita expenditures are below the negotiated rates. The capped eligibility group per capita payments shall: (i) Be based on targeted per capita costs for the full duration of the demonstration period; (ii) include due consideration and flexibility for unforeseen events, changes in the delivery of health care, and changes in federal or state law; and (iii) take into account the effect of the federal patient protection and affordable care act on federal resources devoted to medicaid and state children's health insurance programs. Federal payments for each eligibility group shall be based on the product of the negotiated per capita payments for the eligibility group multiplied by the actual caseload for the eligibility group;

(b) Coverage of benefits determined to be essential health benefits under section 1302(b) of the federal patient protection and affordable care act, 42 U.S.C. 18022(b), with coverage of benefits in addition to the essential health benefits as appropriate for distinct categories of enrollees such as children, pregnant women, individuals with disabilities, and elderly adults;

(c) Limited, reasonable, and enforceable cost sharing and premiums to encourage informed consumer behavior and appropriate utilization of health services, while ensuring that access to evidence-based, preventative and primary care is not hindered;

(d) Streamlined eligibility determinations;

(e) Innovative reimbursement methods such as bundled, global, and risk-bearing payment arrangements, that promote effective purchasing, efficient use of health services, and support health homes, accountable care organizations, and other innovations intended to contain costs, improve health, and incent smart consumer decision making;

(f) Clients to voluntarily enroll in the insurance exchange, and broadened enrollment in employer-sponsored insurance when available and deemed cost-effective for the state, with authority to require clients to remain enrolled in their chosen plan for the calendar year;

(g) An expedited process of forty-five days or less in which the centers for medicare and medicaid services must respond to any state request for changes to the demonstration project once it is implemented to ensure that the state has the necessary flexibility to manage within its eligibility group per capita payment caps; and

(h) The development of an alternative payment methodology for federally qualified health centers and rural health clinics that enables capitated or global payment of enhanced payments.

(2) The department shall provide status reports to the joint legislative select committee on health reform implementation as requested by the committee.

(3) The department shall provide multiple opportunities for stakeholders and the general public to review and comment on the request as it developed.

(4) The department shall identify changes to state law necessary to ensure successful and timely implementation of the demonstration project. [2011 1st sp.s. c 1 § 2.]

Findings—2011 1st sp.s. c 1: "The legislature finds that mounting budget pressures combined with growth in enrollment and constraints in the medicaid program have forced open discussion throughout the country and in our state concerning complete withdrawal from the medicaid program.

The legislature recognizes that a better and more sustainable way forward would involve new state flexibility for managing its medicaid program built on the success of the basic health plan and Washington's transitional bridge waiver, where elements of consumer participation and choice, benefit design flexibility, and payment flexibility have helped keep costs low. The legislature further finds that either a centers for medicare and medicaid services' innovation center project or a section 1115 demonstration project, or both, with capped eligibility group per capita payments would allow the state to operate as a laboratory of innovation for bending the cost curve, preserving the safety net, and improving the management of care for low-income populations." [2011 1st sp.s. c 1 § 1.]

74.09.770 Maternity care access system established.

(1) The legislature finds that Washington state and the nation as a whole have a high rate of infant illness and death compared with other industrialized nations. This is especially true for minority and low-income populations. Premature and low weight births have been directly linked to infant illness and death. The availability of adequate maternity care throughout the course of pregnancy has been identified as a major factor in reducing infant illness and death. Further, the investment in preventive health care programs, such as maternity care, contributes to the growth of a healthy and productive society and is a sound approach to health care cost containment. The legislature further finds that access to maternity care for low-income women in the state of Washington has declined significantly in recent years and has reached a crisis level.

(2) It is the purpose of this subchapter to provide, consistent with appropriated funds, maternity care necessary to ensure healthy birth outcomes for low-income families. To this end, a maternity care access system is established based on the following principles:

(a) The family is the fundamental unit in our society and should be supported through public policy.

(b) Access to maternity care for eligible persons to ensure healthy birth outcomes should be made readily available in an expeditious manner through a single service entry point.

(c) Unnecessary barriers to maternity care for eligible persons should be removed.

(d) Access to preventive and other health care services should be available for low-income children.

(e) Each woman should be encouraged to and assisted in making her own informed decisions about her maternity care.

(f) Unnecessary barriers to the provision of maternity care by qualified health professionals should be removed.

(g) The system should be sensitive to cultural differences among eligible persons.

(h) To the extent possible, decisions about the scope, content, and delivery of services should be made at the local level involving a broad representation of community interests.

(i) The maternity care access system should be evaluated at appropriate intervals to determine effectiveness and need for modification.

(j) Maternity care services should be delivered in a cost-effective manner. [2011 1st sp.s. c 15 § 48; 1989 1st ex.s. c 10 § 2.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.790 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 74.09.760 through 74.09.820 and 74.09.510:

(1) "At-risk eligible person" means an eligible person determined by the authority to need special assistance in applying for and obtaining maternity care, including pregnant women who are substance abusers, pregnant and parenting adolescents, pregnant minority women, and other eligible persons who need special assistance in gaining access to the maternity care system.

(2) "Authority" means the Washington state health care authority.

(3) "County authority" means the board of county commissioners, county council, or county executive having the authority to participate in the maternity care access program or its designee. Two or more county authorities may enter into joint agreements to fulfill the requirements of this chapter.

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

(5) "Eligible person" means a woman in need of maternity care or a child, who is eligible for medical assistance pursuant to this chapter or the prenatal care program administered by the authority.

(6) "Family planning services" means planning the number of one's children by use of contraceptive techniques.

(7) "Maternity care services" means inpatient and outpatient medical care, case management, and support services necessary during prenatal, delivery, and postpartum periods.

(8) "Support services" means, at least, public health nursing assessment and follow-up, health and childbirth education, psychological assessment and counseling, outreach services, nutritional assessment and counseling, needed vitamin and nonprescriptive drugs, transportation, family planning services, and child care. Support services may include alcohol and substance abuse treatment for pregnant women who are addicted or at risk of being addicted to alcohol or drugs to the extent funds are made available for that purpose. [2011 1st sp.s. c 15 § 49; 1993 c 407 § 9; 1990 c 151 § 4; 1989 1st ex.s. c 10 § 4.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.800 Maternity care access program established. The authority shall, consistent with the state budget act, develop a maternity care access program designed to ensure healthy birth outcomes as follows:

(1) Provide maternity care services to low-income pregnant women and health care services to children in poverty to the maximum extent allowable under the medical assistance program, Title XIX of the federal social security act;

(2) Provide maternity care services to low-income women who are not eligible to receive such services under the medical assistance program, Title XIX of the federal social security act;

(3) Have the following procedures in place to improve access to maternity care services and eligibility determina-

tions for pregnant women applying for maternity care services under the medical assistance program, Title XIX of the federal social security act:

(a) Use of a shortened and simplified application form;

(b) Outstationing authority staff to make eligibility determinations;

(c) Establishing local plans at the county and regional level, coordinated by the authority; and

(d) Conducting an interview for the purpose of determining medical assistance eligibility within five working days of the date of an application by a pregnant woman and making an eligibility determination within fifteen working days of the date of application by a pregnant woman;

(4) Establish a maternity care case management system that shall assist at-risk eligible persons with obtaining medical assistance benefits and receiving maternity care services, including transportation and child care services;

(5) Within available resources, establish appropriate reimbursement levels for maternity care providers;

(6) Implement a broad-based public education program that stresses the importance of obtaining maternity care early during pregnancy;

(7) Refer persons eligible for maternity care services under the program established by this section to persons, agencies, or organizations with maternity care service practices that primarily emphasize healthy birth outcomes;

(8) Provide family planning services including information about the synthetic progestin capsule implant form of contraception, for twelve months immediately following a pregnancy to women who were eligible for medical assistance under the maternity care access program during that pregnancy or who were eligible only for emergency labor and delivery services during that pregnancy; and

(9) Within available resources, provide family planning services to women who meet the financial eligibility requirements for services under subsections (1) and (2) of this section. [2011 1st sp.s. c 15 § 50; 1993 c 407 § 10; 1989 1st ex.s. c 10 § 5.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.810 Alternative maternity care service delivery system established—Remedial action report. (1) The authority shall establish an alternative maternity care service delivery system, if it determines that a county or a group of counties is a maternity care distressed area. A maternity care distressed area shall be defined by the authority, in rule, as a county or a group of counties where eligible women are unable to obtain adequate maternity care. The authority shall include the following factors in its determination:

(a) Higher than average percentage of eligible persons in the distressed area who receive late or no prenatal care;

(b) Higher than average percentage of eligible persons in the distressed area who go out of the area to receive maternity care;

(c) Lower than average percentage of obstetrical care providers in the distressed area who provide care to eligible persons;

(d) Higher than average percentage of infants born to eligible persons per obstetrical care provider in the distressed area; and

(e) Higher than average percentage of infants that are of low birth weight, five and one-half pounds or two thousand five hundred grams, born to eligible persons in the distressed area.

(2) If the authority determines that a maternity care distressed area exists, it shall notify the relevant county authority. The county authority shall, within one hundred twenty days, submit a brief report to the authority recommending remedial action. The report shall be prepared in consultation with the authority and with the department's local community service offices, the local public health officer, community health clinics, health care providers, hospitals, the business community, labor representatives, and low-income advocates in the distressed area. A county authority may contract with a local nonprofit entity to develop the report. If the county authority is unwilling or unable to develop the report, it shall notify the authority within thirty days, and the authority shall develop the report for the distressed area.

(3) The authority shall review the report and use it, to the extent possible, in developing strategies to improve maternity care access in the distressed area. The authority may contract with or directly employ qualified maternity care health providers to provide maternity care services, if access to such providers in the distressed area is not possible by other means. In such cases, the authority is authorized to pay that portion of the health care providers' malpractice liability insurance that represents the percentage of maternity care provided to eligible persons by that provider through increased medical assistance payments. [2011 1st sp.s. c 15 § 51; 1989 1st ex.s. c 10 § 6.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

74.09.820 Maternity care provider's loan repayment program. To the extent that federal matching funds are available, the authority or the department of health shall establish, in consultation with the health science programs of the state's colleges and universities, and community health clinics, a loan repayment program that will encourage maternity care providers to practice in medically underserved areas in exchange for repayment of part or all of their health education loans. [2011 1st sp.s. c 15 § 52; 1989 1st ex.s. c 10 § 7.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Health professional scholarships: Chapter 28B.115 RCW.

Chapter 74.09A RCW

MEDICAL ASSISTANCE— COORDINATION OF BENEFITS— COMPUTERIZED INFORMATION TRANSFER

Sections

74.09A.005	Findings.
74.09A.010	Definitions.
74.09A.020	Computerized information—Provision to health insurers.
74.09A.030	Duties of health insurers—Providing information—Payments—Claims—Costs and fees.

[2011 RCW Supp—page 1472]

74.09A.005 Findings. The legislature finds that:

(1) Simplification in the administration of payment of health benefits is important for the state, providers, and health insurers;

(2) The state, providers, and health insurers should take advantage of all opportunities to streamline operations through automation and the use of common computer standards;

(3) It is in the best interests of the state, providers, and health insurers to identify all third parties that are obligated to cover the cost of health care coverage of joint beneficiaries; and

(4) Health insurers, as a condition of doing business in Washington, must increase their effort to share information with the authority and accept the authority's timely claims consistent with 42 U.S.C. 1396a(a)(25).

Therefore, the legislature declares that to improve the coordination of benefits between the health care authority and health insurers to ensure that medical insurance benefits are properly utilized, a transfer of information between the authority and health insurers should be instituted, and the process for submitting requests for information and claims should be simplified. [2011 1st sp.s. c 15 § 117; 2007 c 179 § 1; 1993 c 10 § 1.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2007 c 179: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 179 § 5.]

74.09A.010 Definitions. For the purposes of this chapter:

(1) "Authority" means the Washington state health care authority.

(2) "Computerized" means online or batch processing with standardized format via magnetic tape output.

(3) "Health insurance coverage" includes any policy, contract, or agreement under which health care items or services are provided, arranged, reimbursed, or paid for by a health insurer.

(4) "Health insurer" means any party that is, by statute, policy, contract, or agreement, legally responsible for payment of a claim for a health care item or service, including, but not limited to, a commercial insurance company providing disability insurance under chapter 48.20 or 48.21 RCW, a health care service contractor providing health care coverage under chapter 48.44 RCW, a health maintenance organization providing comprehensive health care services under chapter 48.46 RCW, an employer or union self-insured plan, any private insurer, a group health plan, a service benefit plan, a managed care organization, a pharmacy benefit manager, and a third party administrator.

(5) "Joint beneficiary" is an individual who has health insurance coverage and is a recipient of public assistance benefits under chapter 74.09 RCW. [2011 1st sp.s. c 15 § 118; 2007 c 179 § 2; 1993 c 10 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2007 c 179: See note following RCW 74.09A.005.

74.09A.020 Computerized information—Provision to health insurers. (1) The authority shall provide routine and periodic computerized information to health insurers regarding client eligibility and coverage information. Health insurers shall use this information to identify joint beneficiaries. Identification of joint beneficiaries shall be transmitted to the authority. The authority shall use this information to improve accuracy and currency of health insurance coverage and promote improved coordination of benefits.

(2) To the maximum extent possible, necessary data elements and a compatible database shall be developed by affected health insurers and the authority. The authority shall establish a representative group of health insurers and state agency representatives to develop necessary technical and file specifications to promote a standardized database. The database shall include elements essential to the authority and its population's health insurance coverage information.

(3) If the state and health insurers enter into other agreements regarding the use of common computer standards, the database identified in this section shall be replaced by the new common computer standards.

(4) The information provided will be of sufficient detail to promote reliable and accurate benefit coordination and identification of individuals who are also eligible for authority programs.

(5) The frequency of updates will be mutually agreed to by each health insurer and the authority based on frequency of change and operational limitations. In no event shall the computerized data be provided less than semiannually.

(6) The health insurers and the authority shall safeguard and properly use the information to protect records as provided by law, including but not limited to chapters 42.48, 74.09, 74.04, 70.02, and 42.56 RCW, and 42 U.S.C. Sec. 1396a and 42 C.F.R. Sec. 43 et seq. The purpose of this exchange of information is to improve coordination and administration of benefits and ensure that medical insurance benefits are properly utilized.

(7) The authority shall target implementation of this section to those health insurers with the highest probability of joint beneficiaries. [2011 1st sp.s. c 15 § 119; 2007 c 179 § 3; 2005 c 274 § 350; 1993 c 10 § 3.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2007 c 179: See note following RCW 74.09A.005.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

74.09A.030 Duties of health insurers—Providing information—Payments—Claims—Costs and fees. Health insurers, as a condition of doing business in Washington, must:

(1) Provide, with respect to individuals who are eligible for, or are provided, medical assistance under chapter 74.09 RCW, upon the request of the authority, information to determine during what period the individual or their spouses or

their dependants may be, or may have been, covered by a health insurer and the nature of coverage that is or was provided by the health insurer, including the name, address, and identifying number of the plan, in a manner prescribed by the authority;

(2) Accept the authority's right to recovery and the assignment to the authority of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under chapter 74.09 RCW;

(3) Respond to any inquiry by the authority regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of such health care item or service;

(4) Agree not to deny a claim submitted by the authority solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if:

(a) The claim is submitted by the authority within the three-year period beginning on the date the item or service was furnished; and

(b) Any action by the authority to enforce its rights with respect to such claim is commenced within six years of the authority's submission of such claim; and

(5) Agree that the prevailing party in any legal action to enforce this section receives reasonable attorneys' fees as well as related collection fees and costs incurred in the enforcement of this section. [2011 1st sp.s. c 15 § 120; 2007 c 179 § 4.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2007 c 179: See note following RCW 74.09A.005.

Chapter 74.12 RCW

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Sections

74.12.037 Income eligibility.

74.12.037 Income eligibility. The department shall adopt rules, effective November 1, 2011, establishing income eligibility for temporary assistance for needy families benefits for a child, other than a foster child, who lives with a caregiver other than his or her parents. The department shall establish a sliding scale benefit standard for a child when the income of the child's caregiver is above two hundred percent but below three hundred percent of the federal poverty level based on family size. A caregiver with an income above three hundred percent of the federal poverty level shall not be eligible for temporary assistance for needy families benefits for a child, not a foster child, who is residing with that caregiver. [2011 1st sp.s. c 42 § 4.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Chapter 74.13 RCW

CHILD WELFARE SERVICES

Sections

74.13.020	Definitions.
74.13.029	Dependency established—Social worker's duty to provide document containing information. (<i>Effective January 1, 2012.</i>)
74.13.031	Duties of department—Child welfare services—Children's services advisory committee (<i>as amended by 2011 c 160</i>).
74.13.031	Duties of department—Child welfare services—Children's services advisory committee (<i>as amended by 2011 c 330</i>).
74.13.032	Crisis residential centers—Establishment—Staff—Duties—Semi-secure facilities—Secure facilities.
74.13.350	Children with developmental disabilities—Out-of-home placement—Voluntary placement agreement.
74.13.621	Kinship care oversight committee. (<i>Expires June 30, 2013.</i>)
74.13.640	Child fatality reviews.
74.13.680	Continued foster care or group care.

74.13.020 Definitions. For purposes of this chapter:

(1) "Case management" means the management of services delivered to children and families in the child welfare system, including permanency services, caseworker-child visits, family visits, the convening of family group conferences, the development and revision of the case plan, the coordination and monitoring of services needed by the child and family, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian child welfare act.

(2) "Child" means:

(a) A person less than eighteen years of age; or

(b) A person age eighteen to twenty-one years who is eligible to receive the extended foster care services authorized under RCW 74.13.031.

(3) "Child protective services" has the same meaning as in RCW 26.44.020.

(4) "Child welfare services" means social services including voluntary and in-home services, out-of-home care, case management, and adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(a) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(b) Protecting and caring for dependent, abused, or neglected children;

(c) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children, with services designed to resolve such conflicts;

(d) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(e) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

"Child welfare services" does not include child protection services.

(5) "Committee" means the child welfare transformation design committee.

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

(7) "Extended foster care services" means residential and other support services the department is authorized to provide to foster children. These services include, but are not limited to, placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(8) "Measurable effects" means a statistically significant change which occurs as a result of the service or services a supervising agency is assigned in a performance-based contract, in time periods established in the contract.

(9) "Out-of-home care services" means services provided after the shelter care hearing to or for children in out-of-home care, as that term is defined in RCW 13.34.030, and their families, including the recruitment, training, and management of foster parents, the recruitment of adoptive families, and the facilitation of the adoption process, family reunification, independent living, emergency shelter, residential group care, and foster care, including relative placement.

(10) "Performance-based contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts shall also include provisions that link the performance of the contractor to the level and timing of reimbursement.

(11) "Permanency services" means long-term services provided to secure a child's safety, permanency, and well-being, including foster care services, family reunification services, adoption services, and preparation for independent living services.

(12) "Primary prevention services" means services which are designed and delivered for the primary purpose of enhancing child and family well-being and are shown, by analysis of outcomes, to reduce the risk to the likelihood of the initial need for child welfare services.

(13) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services, as defined in this section. [2011 c 330 § 4; 2010 c 291 § 3. Prior: 2009 c 520 § 2; 2009 c 235 § 3; 1999 c 267 § 7; 1979 c 155 § 76; 1977 ex.s. c 291 § 21; 1975-'76 2nd ex.s. c 71 § 3; 1971 ex.s. c 292 § 66; 1965 c 30 § 3.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—2010 c 291: See note following RCW 74.13.368.

Findings—Intent—2009 c 235: See note following RCW 74.13.031.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Additional notes found at www.leg.wa.gov

74.13.029 Dependency established—Social worker's duty to provide document containing information. (*Effective January 1, 2012.*) Once a dependency is established under chapter 13.34 RCW, the department employee assigned to the case shall provide the dependent child age twelve years and older with a document containing the infor-

mation described in *RCW 74.13.031(16). The department employee shall explain the contents of the document to the child and direct the child to the department's web site for further information. The department employee shall document, in the electronic data system, that this requirement was met. [2011 c 89 § 17; 2009 c 491 § 8.]

***Reviser's note:** RCW 74.13.031 was amended twice during the 2011 regular session and the two versions could not be merged. The reference is correct for the 2011 c 160 version, but subsection (16) was renumbered as subsection (15) in 2011 c 330 § 5.

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

74.13.031 Duties of department—Child welfare services—Children's services advisory committee (as amended by 2011 c 160). (1) The department and supervising agencies shall develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, the department and supervising agencies shall recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and the department shall annually report to the governor and the legislature concerning the department's and supervising agency's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) The department shall investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) The department or supervising agencies shall offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) The department or supervising agencies shall monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. Under this section children in out-of-home care and in-home dependencies and their caregivers shall receive a private and individual face-to-face visit each month. The department and the supervising agencies shall randomly select no less than ten percent of the caregivers currently providing care to receive one unannounced face-to-face visit in the caregiver's home per year. No caregiver will receive an unannounced visit through the random selection process for two consecutive years. If the caseworker makes a good faith effort to conduct the unannounced visit to a caregiver and is unable to do so, that month's visit to that caregiver need not be unannounced. The department and supervising agencies are encouraged to group monthly visits to caregivers by geographic area so that in the event an unannounced visit cannot be completed, the caseworker may complete other required monthly visits. The department shall use a method of random selection that does not cause a fiscal impact to the department.

The department or supervising agencies shall conduct the monthly visits with children and caregivers to whom it is providing child welfare services.

(6) The department and supervising agencies shall have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where

required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) The department and supervising agency shall have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) The department and supervising agency shall have authority to purchase care for children.

(9) The department shall establish a children's services advisory committee with sufficient members representing supervising agencies which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10) The department and supervising agencies shall have authority to provide continued foster care or group care as needed to participate in or complete a high school or vocational school program.

(11)(a) The department shall, within amounts appropriated for this specific purpose, have authority to provide continued foster care or group care to youth ages eighteen to twenty-one years who are:

(i) Enrolled and participating in a postsecondary or vocational educational program;

(ii) Participating in a program or activity designed to promote or remove barriers to employment;

(iii) Engaged in employment for eighty hours or more per month; or

(iv) Incapable of engaging on any of the activities described in (a)(i) through (iii) of this subsection due to a medical condition that is supported by regularly updated information.

(b) A youth who remains eligible for placement services or benefits pursuant to department rules may continue to receive placement services and benefits until the youth reaches his or her twenty-first birthday.

(12) The department, within amounts appropriated for this specific purpose, (have) has authority to provide adoption support benefits, or subsidized relative guardianship benefits on behalf of youth ages eighteen to twenty-one years who achieved permanency through adoption or a subsidized relative guardianship at age sixteen or older and who are engaged in one of the activities described in subsection (11) of this section.

(13) The department shall refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(14) The department and supervising agencies shall have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(15) Within amounts appropriated for this specific purpose, the supervising agency or department shall provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(16) The department and supervising agencies shall have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(17) The department and supervising agencies shall consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department and supervising agencies are performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens

services for the protection of children. Consultation shall occur at the regional and statewide levels.

(18)(a) ~~The department shall, within current funding levels, place on ((the) its public web site ((maintained by the department))~~ a document listing the duties and responsibilities the department has to a child subject to a dependency petition including, but not limited to, the following:

(i) Reasonable efforts, including the provision of services, toward reunification of the child with his or her family;

(ii) Sibling visits subject to the restrictions in RCW 13.34.136(2)(b)(ii);

(iii) Parent-child visits;

(iv) Statutory preference for placement with a relative or other suitable person, if appropriate; and

(v) Statutory preference for an out-of-home placement that allows the child to remain in the same school or school district, if practical and in the child's best interests.

(b) The document must be prepared in conjunction with a community-based organization and must be updated as needed. [2011 c 160 § 2. Prior: 2009 c 520 § 51; 2009 c 491 § 7; (2009 c 235 § 4 expired October 1, 2010); 2009 c 235 § 2; 2008 c 267 § 6; 2007 c 413 § 10; prior: 2006 c 266 § 1; 2006 c 221 § 3; 2004 c 183 § 3; 2001 c 192 § 1; 1999 c 267 § 8; 1998 c 314 § 10; prior: 1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9; prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Findings—2011 c 160: "The legislature finds that foster parents are a critical piece of the dependency system. The legislature further finds that the majority of foster parents provide excellent care to children in the dependency system, many of whom have suffered serious damage in their families of origin. It is the legislature's belief that through the selfless dedication of many foster parents that abused and neglected children are able to heal and go on to lead productive lives. The legislature also believes that some foster parents act in ways that are damaging to the children in their care and it is the department of social and health services' responsibility to make sure all children in care are safe. The legislature finds that unannounced visits to caregivers' homes is another method by which the department of social and health services can make sure the children in foster care are safe." [2011 c 160 § 1.]

74.13.031 Duties of department—Child welfare services—Children's services advisory committee (as amended by 2011 c 330). The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. The policy for monitoring placements under this section shall require that children in out-of-home care and in-home depen-

dencies and their caregivers receive a private and individual face-to-face visit each month.

(a) The department shall conduct the monthly visits with children and caregivers required under this section unless the child's placement is being supervised under a contract between the department and a private agency accredited by a national child welfare accrediting entity, in which case the private agency shall, within existing resources, conduct the monthly visits with the child and with the child's caregiver according to the standards described in this subsection and shall provide the department with a written report of the visits within fifteen days of completing the visits.

(b) In cases where the monthly visits required under this subsection are being conducted by a private agency, the department shall conduct a face-to-face health and safety visit with the child at least once every ninety days.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10) ~~((Have authority to)) Provide continued ((foster care or group care as needed)) extended foster care services to youth ages eighteen to twenty-one years to participate in or complete a ((high school or vocational school) secondary education program or a secondary education equivalency program.~~

(11) ~~((a) Within amounts appropriated for this specific purpose, have authority to provide continued foster care or group care to youth ages eighteen to twenty-one years who are:~~

~~(i) Enrolled and participating in a postsecondary or vocational educational program;~~

~~(ii) Participating in a program or activity designed to promote or remove barriers to employment;~~

~~(iii) Engaged in employment for eighty hours or more per month; or~~

~~(iv) Incapable of engaging on any of the activities described in (a)(i) through (iii) of this subsection due to a medical condition that is supported by regularly updated information.~~

~~(b) A youth who remains eligible for placement services or benefits pursuant to department rules may continue to receive placement services and benefits until the youth reaches his or her twenty-first birthday.~~

(12) ~~Within amounts appropriated for this specific purpose,) Have authority to provide adoption support benefits, or ((subsidized)) relative guardianship ((benefits)) subsidies on behalf of youth ages eighteen to twenty-one years who achieved permanency through adoption or a ((subsidized)) relative guardianship at age sixteen or older and who ((are engaged in one of the activities)) meet the criteria described in subsection ((11)) (10) of this section.~~

~~((13)) (12) Refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.~~

~~((14)) (13) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards~~

and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

~~((15))~~ (14) Within amounts appropriated for this specific purpose, provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

~~((16))~~ (15) Have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

~~((17))~~ (16) Consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department is performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels. [2011 c 330 § 5. Prior: 2009 c 520 § 51; 2009 c 491 § 7; 2009 c 235 § 2; (2009 c 235 § 4 expired October 1, 2010); 2008 c 267 § 6; 2007 c 413 § 10; prior: 2006 c 266 § 1; 2006 c 221 § 3; 2004 c 183 § 3; 2001 c 192 § 1; 1999 c 267 § 8; 1998 c 314 § 10; prior: 1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9; prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Reviser's note: RCW 74.13.031 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Intent—2011 c 330: See note following RCW 13.04.011.

Effective date—2009 c 235 § 2: "Section 2 of this act takes effect October 1, 2010." [2009 c 235 § 7.]

Expiration date—2009 c 235 § 4: "Section 4 of this act expires October 1, 2010." [2009 c 235 § 8.]

Findings—Intent—2009 c 235: "(1) The legislature finds that the federal fostering connections to success and increasing adoptions act of 2008 provides important new opportunities for the state to use federal funding to promote permanency and positive outcomes for youth in foster care and for those who age out of the foster care system.

(2) The legislature also finds that research regarding former foster youth is generally sobering. Longitudinal research on the adult functioning of former foster youth indicates a disproportionate likelihood that youth aging out of foster care and those who spent several years in care will experience poor outcomes in a variety of areas, including limited human capital upon which to build economic security; untreated mental or behavioral health problems; involvement in the criminal justice and corrections systems; and early parenthood combined with second-generation child welfare involvement. The legislature further finds that research also demonstrates that access to adequate and appropriate supports during the period of transition from foster care to independence can have significant positive impacts on adult functioning and can improve outcomes relating to educational attainment and postsecondary enrollment; employment and earnings; and reduced rates of teen pregnancies.

(3) The legislature intends to clarify existing authority for foster care services beyond age eighteen and to establish authority for future expansion of housing and other supports for youth aging out of foster care and youth who achieved permanency in later adolescence." [2009 c 235 § 1.]

Effective date—2008 c 267 § 6: "Section 6 of this act takes effect December 31, 2008." [2008 c 267 § 14.]

Severability—2007 c 413: See note following RCW 13.34.215.

Construction—2006 c 266: "Nothing in this act shall be construed to create:

- (1) An entitlement to services;
- (2) Judicial authority to extend the jurisdiction of juvenile court in a proceeding under chapter 13.34 RCW to a youth who has attained eighteen years of age or to order the provision of services to the youth; or

(3) A private right of action or claim on the part of any individual, entity, or agency against the department of social and health services or any contractor of the department." [2006 c 266 § 2.]

Adoption of rules—2006 c 266: "The department of social and health services is authorized to adopt rules establishing eligibility for independent living services and placement for youths under this act." [2006 c 266 § 3.]

Study and report—2006 c 266: "(1) Beginning in July 2008 and subject to the approval of its governing board, the Washington state institute for public policy shall conduct a study measuring the outcomes for foster youth who have received continued support pursuant to RCW 74.13.031(10). The study should include measurements of any savings to the state and local government. The institute shall issue a report containing its preliminary findings to the legislature by December 1, 2008, and a final report by December 1, 2009.

(2) The institute is authorized to accept nonstate funds to conduct the study required in subsection (1) of this section." [2006 c 266 § 4.]

Finding—2006 c 221: See note following RCW 13.34.315.

Effective date—2004 c 183: See note following RCW 13.34.160.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Declaration of purpose—1967 c 172: See RCW 74.15.010.

Abuse of child: Chapter 26.44 RCW.

Licensing of agencies caring for or placing children, expectant mothers, and individuals with developmental disabilities: Chapter 74.15 RCW.

Additional notes found at www.leg.wa.gov

74.13.032 Crisis residential centers—Establishment—Staff—Duties—Semi-secure facilities—Secure facilities. (1) The department shall establish, through performance-based contracts with private or public vendors, regional crisis residential centers with semi-secure facilities. These facilities shall be structured group care facilities licensed under rules adopted by the department and shall have an average of at least four adult staff members and in no event less than three adult staff members to every eight children.

(2) Within available funds appropriated for this purpose, the department shall establish, through performance-based contracts with private or public vendors, regional crisis residential centers with secure facilities. These facilities shall be facilities licensed under rules adopted by the department. These centers may also include semi-secure facilities and to such extent shall be subject to subsection (1) of this section.

(3) The department shall, in addition to the facilities established under subsections (1) and (2) of this section, establish additional crisis residential centers pursuant to performance-based contracts with licensed private group care facilities.

(4) The department is authorized to allow contracting entities to include a combination of secure or semi-secure crisis residential centers as defined in RCW 13.32A.030 and/or HOPE centers pursuant to RCW 74.15.220 in the same building or structure. The department shall permit the colocation of these centers only if the entity operating the facility agrees to designate a particular number of beds to each type of center that is located within the building or structure.

(5) The staff at the facilities established under this section shall be trained so that they may effectively counsel juveniles admitted to the centers, provide treatment, supervision, and structure to the juveniles that recognize the need for support and the varying circumstances that cause children to leave their families, and carry out the responsibilities stated in RCW 13.32A.090. The responsibilities stated in RCW

13.32A.090 may, in any of the centers, be carried out by the department.

(6) The secure facilities located within crisis residential centers shall be operated to conform with the definition in RCW 13.32A.030. The facilities shall have an average of no less than one adult staff member to every ten children. The staffing ratio shall continue to ensure the safety of the children.

(7) If a secure crisis residential center is located in or adjacent to a secure juvenile detention facility, the center shall be operated in a manner that prevents in-person contact between the residents of the center and the persons held in such facility. [2011 c 240 § 1; 2009 c 520 § 53; 1998 c 296 § 4; 1995 c 312 § 60; 1979 c 155 § 78.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Additional notes found at www.leg.wa.gov

74.13.350 Children with developmental disabilities—Out-of-home placement—Voluntary placement agreement. It is the intent of the legislature that parents are responsible for the care and support of children with developmental disabilities. The legislature recognizes that, because of the intense support required to care for a child with developmental disabilities, the help of an out-of-home placement may be needed. It is the intent of the legislature that, when the sole reason for the out-of-home placement is the child's developmental disability, such services be offered by the department to these children and their families through a voluntary placement agreement. In these cases, the parents shall retain legal custody of the child.

As used in this section, "voluntary placement agreement" means a written agreement between the department and a child's parent or legal guardian authorizing the department to place the child in a licensed facility. Under the terms of this agreement, the parent or legal guardian shall retain legal custody and the department shall be responsible for the child's placement and care. The agreement shall at a minimum specify the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the department while the child is in placement. The agreement must be signed by the child's parent or legal guardian and the department to be in effect, except that an agreement regarding an Indian child shall not be valid unless executed in accordance with RCW 13.38.150. Any party to a voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

As used in this section, "out-of-home placement" and "out-of-home care" mean the placement of a child in a foster family home or group care facility licensed under chapter 74.15 RCW.

Whenever the department places a child in out-of-home care under a voluntary placement pursuant to this section, the department shall have the responsibility for the child's placement and care. The department shall develop a permanency plan of care for the child no later than sixty days from the date

that the department assumes responsibility for the child's placement and care. Within the first one hundred eighty days of the placement, the department shall obtain a judicial determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the placement is in the best interests of the child. If the child's out-of-home placement ends before one hundred eighty days have elapsed, no judicial determination under RCW 13.04.030(1)(b) is required. The permanency planning hearings shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

The department shall provide for periodic administrative reviews as required by federal law. A review may be called at any time by either the department, the parent, or the legal guardian.

Nothing in this section shall prevent the department from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030.

The department shall adopt rules providing for the implementation of chapter 386, Laws of 1997 and the transfer of responsibility for out-of-home placements from the dependency process under chapter 13.34 RCW to the process under this chapter.

It is the intent of the legislature that the department undertake voluntary out-of-home placement in cases where the child's developmental disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child, and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home. If the department does not accept a voluntary placement agreement signed by the parent, a petition may be filed and an action pursued under chapter 13.34 RCW. The department shall inform the parent, guardian, or legal custodian in writing of their right to civil action under chapter 13.34 RCW.

Nothing in this section prohibits the department from seeking support from parents of a child, including a child with a developmental disability if the child has been placed into care as a result of an action under chapter 13.34 RCW, when state or federal funds are expended for the care and maintenance of that child or when the department receives an application for services from the physical custodian of the child, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents. [2011 c 309 § 34; 2004 c 183 § 4; 1998 c 229 § 1; 1997 c 386 § 16.]

Effective date—2004 c 183: See note following RCW 13.34.160.

74.13.621 Kinship care oversight committee. (Expires June 30, 2013.) (1) Within existing resources, the department shall establish an oversight committee to monitor, guide, and report on kinship care recommendations and implementation activities. The committee shall:

(a) Draft a kinship care definition that is restricted to persons related by blood, marriage, or adoption, including marriages that have been dissolved, or for a minor defined as an "Indian child" under the federal Indian child welfare act (25 U.S.C. Sec. 1901 et seq.), the definition of "extended family member" under the federal Indian child welfare act, and a set of principles. If the committee concludes that one or more

programs or services would be more efficiently and effectively delivered under a different definition of kin, it shall state what definition is needed, and identify the program or service in the report. It shall also provide evidence of how the program or service will be more efficiently and effectively delivered under the different definition. The department shall not adopt rules or policies changing the definition of kin without authorizing legislation;

(b) Monitor and provide consultation on the implementation of recommendations contained in the 2002 kinship care report, including but not limited to the recommendations relating to legal and respite care services and resources;

(c) Partner with nonprofit organizations and private sector businesses to guide a public education awareness campaign; and

(d) Assist with developing future recommendations on kinship care issues.

(2) The department shall consult with the oversight committee on its efforts to better collaborate and coordinate services to benefit kinship care families.

(3) The oversight committee must consist of a minimum of thirty percent kinship caregivers, who shall represent a diversity of kinship families. Statewide representation with geographic, ethnic, and gender diversity is required. Other members shall include representatives of the department, representatives of relevant state agencies, representatives of the private nonprofit and business sectors, child advocates, representatives of Washington state Indian tribes as defined under the federal Indian welfare act (25 U.S.C. Sec. 1901 et seq.), and representatives of the legal or judicial field. Birth parents, foster parents, and others who have an interest in these issues may also be included.

(4) To the extent funding is available, the department may reimburse nondepartmental members of the oversight committee for costs incurred in participating in the meetings of the oversight committee.

(5) The kinship care oversight committee shall update the legislature and governor annually on committee activities, with the first update due by January 1, 2006.

(6) This section expires June 30, 2013. [2011 1st sp.s. c 50 § 965; 2009 c 564 § 954; 2005 c 439 § 1.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

74.13.640 Child fatality reviews. (1)(a) The department shall conduct a child fatality review in the event of a fatality suspected to be caused by child abuse or neglect of any minor who is in the care of the department or a supervising agency or receiving services described in this chapter or who has been in the care of the department or a supervising agency or received services described in this chapter within one year preceding the minor's death.

(b) The department shall consult with the office of the family and children's ombudsman to determine if a child fatality review should be conducted in any case in which it cannot be determined whether the child's death is the result of suspected child abuse or neglect.

(c) The department shall ensure that the fatality review team is made up of individuals who had no previous involve-

ment in the case, including individuals whose professional expertise is pertinent to the dynamics of the case.

(d) Upon conclusion of a child fatality review required pursuant to this section, the department shall within one hundred eighty days following the fatality issue a report on the results of the review, unless an extension has been granted by the governor. Reports must be distributed to the appropriate committees of the legislature, and the department shall create a public web site where all child fatality review reports required under this section must be posted and maintained. A child fatality review report completed pursuant to this section is subject to public disclosure and must be posted on the public web site, except that confidential information may be redacted by the department consistent with the requirements of RCW 13.50.100, 68.50.105, 74.13.500 through 74.13.525, chapter 42.56 RCW, and other applicable state and federal laws.

(e) The department shall develop and implement procedures to carry out the requirements of this section.

(2) In the event of a near fatality of a child who is in the care of or receiving services described in this chapter from the department or a supervising agency or who has been in the care of or received services described in this chapter from the department or a supervising agency within one year preceding the near fatality, the department shall promptly notify the office of the family and children's ombudsman. The department may conduct a review of the near fatality at its discretion or at the request of the office of the family and children's ombudsman.

(3) In any review of a child fatality or near fatality in which the child was placed with or received services from a supervising agency pursuant to a contract with the department, the department and the fatality review team shall have access to all records and files regarding the child or otherwise relevant to the review that have been produced or retained by the supervising agency.

(4)(a) A child fatality or near fatality review completed pursuant to this section is subject to discovery in a civil or administrative proceeding, but may not be admitted into evidence or otherwise used in a civil or administrative proceeding except pursuant to this section.

(b) A department employee responsible for conducting a child fatality or near fatality review, or member of a child fatality or near fatality review team, may not be examined in a civil or administrative proceeding regarding (i) the work of the child fatality or near fatality review team, (ii) the incident under review, (iii) his or her statements, deliberations, thoughts, analyses, or impressions relating to the work of the child fatality or near fatality review team or the incident under review, or (iv) the statements, deliberations, thoughts, analyses, or impressions of any other member of the child fatality or near fatality review team, or any person who provided information to the child fatality or near fatality review team, relating to the work of the child fatality or near fatality review team or the incident under review.

(c) Documents prepared by or for a child fatality or near fatality review team are inadmissible and may not be used in a civil or administrative proceeding, except that any document that exists before its use or consideration in a child fatality or near fatality review, or that is created independently of such review, does not become inadmissible merely

because it is reviewed or used by a child fatality or near fatality review team. A person is not unavailable as a witness merely because the person has been interviewed by or has provided a statement for a child fatality or near fatality review, but if called as a witness, a person may not be examined regarding the person's interactions with the child fatality or near fatality review including, without limitation, whether the person was interviewed during such review, the questions that were asked during such review, and the answers that the person provided during such review. This section may not be construed as restricting the person from testifying fully in any proceeding regarding his or her knowledge of the incident under review.

(d) The restrictions set forth in this section do not apply in a licensing or disciplinary proceeding arising from an agency's effort to revoke or suspend the license of any licensed professional based in whole or in part upon allegations of wrongdoing in connection with a minor's death or near fatality reviewed by a child fatality or near fatality review team. [2011 c 61 § 2; 2009 c 520 § 91; 2008 c 211 § 1; 2004 c 36 § 1.]

74.13.680 Continued foster care or group care. (1) Within amounts appropriated for this specific purpose, the department shall have authority to provide continued foster care or group care to youth ages eighteen to twenty-one years who are:

- (a) Enrolled in a secondary education program or a secondary education equivalency program;
- (b) Enrolled and participating in a postsecondary or vocational educational program;
- (c) Participating in a program or activity designed to promote or remove barriers to employment;
- (d) Engaged in employment for eighty hours or more per month; or
- (e) Incapable of engaging in any of the activities described in (a) through (d) of this subsection due to a medical condition that is supported by regularly updated information.

(2) A youth who remains eligible for placement services or benefits under this section pursuant to department rules may, within amounts appropriated for this specific purpose, continue to receive placement services and benefits until the youth reaches his or her twenty-first birthday. [2011 c 330 § 8.]

Intent—2011 c 330: See note following RCW 13.04.011.

Chapter 74.14A RCW CHILDREN AND FAMILY SERVICES

Sections

74.14A.060 Blended funding projects—Department to make annual reports.

74.14A.060 Blended funding projects—Department to make annual reports. Within available funds, the secretary of the department of social and health services shall support blended funding projects for youth. To be eligible for blended funding a child must be eligible for services designed to address a behavioral, mental, emotional, or sub-

[2011 RCW Supp—page 1480]

stance abuse issue from the department of social and health services and require services from more than one categorical service delivery system. Before any blended funding project is established by the secretary, any entity or person proposing the project shall seek input from the public health and safety network or networks established in the catchment area of the project. The network or networks shall submit recommendations on the blended funding project to the private-public initiative described in RCW 70.305.020. The private-public initiative shall advise the secretary whether to approve the proposed blended funding project. The network shall review the proposed blended funding project pursuant to its authority to examine the decategorization of program funds under *RCW 70.190.110, within the current appropriation level. The department shall document the number of children who participate in blended funding projects, the total blended funding amounts per child, the amount charged to each appropriation by program, and services provided to each child through each blended funding project and report this information to the appropriate committees of the legislature by December 1st of each year, beginning in December 1, 2000. [2011 1st sp.s. c 32 § 10; 2000 c 219 § 2.]

*Reviser's note: RCW 70.190.110 was repealed by 2011 1st sp.s. c 32 § 13, effective June 30, 2012.

Transition plan—Report to the legislature—2011 1st sp.s. c 32: See note following RCW 70.305.005.

Additional notes found at www.leg.wa.gov

Chapter 74.14C RCW FAMILY PRESERVATION SERVICES

Sections

74.14C.050 Repealed.

74.14C.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 74.15 RCW CARE OF CHILDREN, EXPECTANT MOTHERS, DEVELOPMENTALLY DISABLED

Sections

74.15.220 HOPE centers—Establishment—Requirements.
74.15.255 Secure or semi-secure crisis residential centers and HOPE centers—Collaboration—Colocation—Requirement for licensing.

74.15.220 HOPE centers—Establishment—Requirements. The secretary shall establish HOPE centers that provide no more than seventy-five beds across the state and may establish HOPE centers by contract, within funds appropriated by the legislature specifically for this purpose. HOPE centers shall be operated in a manner to reasonably assure that street youth placed there will not run away. Street youth may leave a HOPE center during the course of the day to attend school or other necessary appointments, but the street youth must be accompanied by an administrator or an administrator's designee. The street youth must provide the administration with specific information regarding his or her destination and expected time of return to the HOPE center. Any street youth who runs away from a HOPE center shall not be

readmitted unless specifically authorized by the street youth's placement and liaison specialist, and the placement and liaison specialist shall document with specific factual findings an appropriate basis for readmitting any street youth to a HOPE center. HOPE centers are required to have the following:

- (1) A license issued by the secretary;
- (2) A professional with a master's degree in counseling, social work, or related field and at least one year of experience working with street youth or a bachelor of arts degree in social work or a related field and five years of experience working with street youth. This professional staff person may be contractual or a part-time employee, but must be available to work with street youth in a HOPE center at a ratio of one to every fifteen youth staying in a HOPE center. This professional shall be known as a placement and liaison specialist. Preference shall be given to those professionals cross-credentialed in mental health and chemical dependency. The placement and liaison specialist shall:
 - (a) Conduct an assessment of the street youth that includes a determination of the street youth's legal status regarding residential placement;
 - (b) Facilitate the street youth's return to his or her legally authorized residence at the earliest possible date or initiate processes to arrange legally authorized appropriate placement. Any street youth who may meet the definition of dependent child under RCW 13.34.030 must be referred to the department. The department shall determine whether a dependency petition should be filed under chapter 13.34 RCW. A shelter care hearing must be held within seventy-two hours to authorize out-of-home placement for any youth the department determines is appropriate for out-of-home placement under chapter 13.34 RCW. All of the provisions of chapter 13.32A RCW must be followed for children in need of services or at-risk youth;
 - (c) Interface with other relevant resources and system representatives to secure long-term residential placement and other needed services for the street youth;
 - (d) Be assigned immediately to each youth and meet with the youth within eight hours of the youth receiving HOPE center services;
 - (e) Facilitate a physical examination of any street youth who has not seen a physician within one year prior to residence at a HOPE center and facilitate evaluation by a county-designated mental health professional, a chemical dependency specialist, or both if appropriate; and
 - (f) Arrange an educational assessment to measure the street youth's competency level in reading, writing, and basic mathematics, and that will measure learning disabilities or special needs;
- (3) Staff trained in development needs of street youth as determined by the secretary, including an administrator who is a professional with a master's degree in counseling, social work, or a related field and at least one year of experience working with street youth, or a bachelor of arts degree in social work or a related field and five years of experience working with street youth, who must work with the placement and liaison specialist to provide appropriate services on site;
- (4) A data collection system that measures outcomes for the population served, and enables research and evaluation

that can be used for future program development and service delivery. Data collection systems must have confidentiality rules and protocols developed by the secretary;

(5) Notification requirements that meet the notification requirements of chapter 13.32A RCW. The youth's arrival date and time must be logged at intake by HOPE center staff. The staff must immediately notify law enforcement and dependency caseworkers if a street youth runs away from a HOPE center. A child may be transferred to a secure facility as defined in RCW 13.32A.030 whenever the staff reasonably believes that a street youth is likely to leave the HOPE center and not return after full consideration of the factors set forth in RCW 13.32A.130(2)(a) (i) and (ii). The street youth's temporary placement in the HOPE center must be authorized by the court or the secretary if the youth is a dependent of the state under chapter 13.34 RCW or the department is responsible for the youth under chapter 13.32A RCW, or by the youth's parent or legal custodian, until such time as the parent can retrieve the youth who is returning to home;

(6) HOPE centers must identify to the department any street youth it serves who is not returning promptly to home. The department then must contact the missing children's clearinghouse identified in chapter 13.60 RCW and either report the youth's location or report that the youth is the subject of a dependency action and the parent should receive notice from the department;

(7) Services that provide counseling and education to the street youth; and

(8) The department shall award contracts for the operation of HOPE center beds and responsible living skills programs with the goal of facilitating the coordination of services provided for youth by such programs and those services provided by secure and semi-secure crisis residential centers. [2011 c 240 § 2; 1999 c 267 § 12.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Additional notes found at www.leg.wa.gov

74.15.255 Secure or semi-secure crisis residential centers and HOPE centers—Collaboration—Collocation—Requirement for licensing. (1)(a) Within available funds appropriated for this purpose, the department shall contract for a continuum of short-term stabilization services pursuant to RCW 13.32A.030 and 74.15.220. The department shall collaborate with service providers in a manner that allows secure and semi-secure crisis residential centers and HOPE centers to be located in a geographically representative manner and to facilitate the coordination of services provided for youth by such programs. To achieve efficiencies and increase utilization, the department shall allow the collocation of these centers in the same building or structure, except that a youth may not be placed in a secure facility or the secure portion of a collocated facility except as specifically authorized by chapter 13.32A RCW. The department shall allow the collocation of these centers only if the entity operating the facility agrees to designate a particular number of beds to each type of center that is located within the building or structure. The beds so designated must be used only to serve the eligible youth in the program or center for which they are designated.

(b) The department shall adopt rules to allow the licensing of colocated facilities that include any combination of secure or semi-secure crisis residential centers as defined in RCW 13.32A.030, or HOPE centers as defined in RCW 74.15.020. Such rules may provide for flexible payment structures, center specific licensing waivers, or other appropriate methods to increase utilization and provide flexibility, while continuing to meet the statutory goals of the programs. The rules shall provide that a condition of being licensed as a colocated facility is that the contracting entity must designate a particular number of beds in the colocated facility to each type of center that is located within the building or structure. The beds so designated must be used only to serve the eligible youth in the program or center for which they are designated.

(2) The department shall require that to be licensed or continue to be licensed as a secure or semi-secure crisis residential center or HOPE center that the center has on staff, or otherwise has access to, a person who has been trained to work with the needs of sexually exploited children. For purposes of this subsection, "sexually exploited child" means that person as defined in RCW 13.32A.030(17). [2011 c 240 § 3; 2010 c 289 § 10.]

Chapter 74.20 RCW

SUPPORT OF DEPENDENT CHILDREN

Sections

- 74.20.040 Duty of department to enforce child support—Requests for support enforcement services—Schedule of fees—Waiver—Rules.
- 74.20.330 Payment of public assistance as assignment of rights to support—Department authorized to provide services.

74.20.040 Duty of department to enforce child support—Requests for support enforcement services—Schedule of fees—Waiver—Rules. (1) Whenever the department receives an application for public assistance on behalf of a child, or the department receives an application for subsidized child care services or working connections child care services, the department or the department of early learning shall take appropriate action under the provisions of this chapter, chapter 74.20A RCW, or other appropriate statutes of this state to establish or enforce support obligations against the parent or other persons owing a duty to pay support moneys.

(2) The secretary may accept a request for support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against the parent or other persons owing a duty to pay moneys. Requests accepted under this subsection may be conditioned upon the payment of a fee as required by subsection (6) of this section or through regulation issued by the secretary. The secretary may establish by regulation, reasonable standards and qualifications for support enforcement services under this subsection.

(3) The secretary may accept requests for support enforcement services from child support enforcement agencies in other states operating child support programs under Title IV-D of the social security act or from foreign countries,

and may take appropriate action to establish and enforce support obligations, or to enforce subpoenas, information requests, orders for genetic testing, and collection actions issued by the other agency against the parent or other person owing a duty to pay support moneys, the parent or other person's employer, or any other person or entity properly subject to child support collection or information-gathering processes. The request shall contain and be accompanied by such information and documentation as the secretary may by rule require, and be signed by an authorized representative of the agency. The secretary may adopt rules setting forth the duration and nature of services provided under this subsection.

(4) The department may take action to establish, enforce, and collect a support obligation, including performing related services, under this chapter and chapter 74.20A RCW, or through the attorney general or prosecuting attorney for action under chapter 26.09, 26.18, 26.20, 26.21A, or 26.26 RCW or other appropriate statutes or the common law of this state.

(5) Whenever a support order is filed with the Washington state support registry under chapter 26.23 RCW, the department may take appropriate action under the provisions of this chapter, chapter 26.23 or 74.20A RCW, or other appropriate law of this state to establish or enforce the support obligations contained in that order against the responsible parent or other persons owing a duty to pay support moneys.

(6) The secretary, in the case of an individual who has never received assistance under a state program funded under part A and for whom the state has collected at least five hundred dollars of support, shall impose an annual fee of twenty-five dollars for each case in which services are furnished, which shall be retained by the state from support collected on behalf of the individual, but not from the first five hundred dollars of support. The secretary may, on showing of necessity, waive or defer any such fee or cost.

(7) Fees, due and owing, may be retained from support payments directly or collected as delinquent support moneys utilizing any of the remedies in chapter 74.20 RCW, chapter 74.20A RCW, chapter 26.21A RCW, or any other remedy at law or equity available to the department or any agencies with whom it has a cooperative or contractual arrangement to establish, enforce, or collect support moneys or support obligations.

(8) The secretary may waive the fee, or any portion thereof, as a part of a compromise of disputed claims or may grant partial or total charge off of said fee if the secretary finds there are no available, practical, or lawful means by which said fee may be collected or to facilitate payment of the amount of delinquent support moneys or fees owed.

(9) The secretary shall adopt rules conforming to federal laws, including but not limited to complying with section 7310 of the federal deficit reduction act of 2005, 42 U.S.C. Sec. 654, and rules and regulations required to be observed in maintaining the state child support enforcement program required under Title IV-D of the federal social security act. The adoption of these rules shall be calculated to promote the cost-effective use of the agency's resources and not otherwise cause the agency to divert its resources from its essential functions. [2011 1st sp.s. c 42 § 9; 2007 c 143 § 5; 1997 c 58

§ 891; 1989 c 360 § 12; 1985 c 276 § 1; 1984 c 260 § 29; 1982 c 201 § 20; 1973 1st ex.s. c 183 § 1; 1971 ex.s. c 213 § 1; 1963 c 206 § 3; 1959 c 322 § 5.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Severability—2007 c 143: See note following RCW 26.18.170.

Additional notes found at www.leg.wa.gov

74.20.330 Payment of public assistance as assignment of rights to support—Department authorized to provide services. (1) Whenever public assistance is paid under a state program funded under Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, and the federal deficit reduction act of 2005, each applicant or recipient is deemed to have made assignment to the department of any rights to a support obligation from any other person the applicant or recipient may have in his or her own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving public assistance, including any unpaid support obligation or support debt which has accrued at the time the assignment is made.

(2) Payment of public assistance under a state-funded program, or a program funded under Title IV-A, IV-E, or XIX of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996 shall:

(a) Operate as an assignment by operation of law; and

(b) Constitute an authorization to the department to provide the assistance recipient with support enforcement services.

(3) Payment for subsidized child care services or working connections child care services shall constitute an authorization to the department to provide the recipient of the subsidy with support enforcement services. The department is authorized to collect, but not retain, child support payments under this subsection.

(4) Effective October 1, 2008, whenever public assistance is paid under a state program funded under Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, and the federal deficit reduction act of 2005, a member of the family is deemed to have made an assignment to the state any right the family member may have, or on behalf of the family member receiving such assistance, to support from any other person, not exceeding the total amount of assistance paid to the family, which accrues during the period that the family receives assistance under the program. [2011 1st sp.s. c 42 § 10; 2007 c 143 § 6; 2000 c 86 § 6; 1997 c 58 § 936; 1989 c 360 § 13; 1988 c 275 § 19; 1985 c 276 § 3; 1979 ex.s. c 171 § 22.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Severability—2007 c 143: See note following RCW 26.18.170.

Additional notes found at www.leg.wa.gov

Chapter 74.31 RCW TRAUMATIC BRAIN INJURIES

Sections

74.31.005	Findings—Intent.
74.31.020	Washington traumatic brain injury strategic partnership advisory council—Members—Expenses—Appointment—Duties.
74.31.030	Staff support—Department powers and duties—Comprehensive plan.
74.31.040	Public awareness campaign.
74.31.050	Support group programs—Funding—Recommendations.
74.31.060	Traumatic brain injury account.

74.31.005 Findings—Intent. The center for disease control estimates that at least five million three hundred thousand Americans, approximately two percent of the United States population, currently have a long-term or lifelong need for help to perform activities of daily living as a result of a traumatic brain injury. Each year approximately one million four hundred thousand people in this country, including children, sustain traumatic brain injuries as a result of a variety of causes including falls, motor vehicle injuries, being struck by an object, or as a result of an assault and other violent crimes, including domestic violence. Additionally, there are significant numbers of veterans who sustain traumatic brain injuries as a result of their service in the military.

Prevention and the provision of appropriate supports and services in response to traumatic brain injury are consistent with the governor's executive order No. 10-01, "Implementing Health Reform the Washington Way," which recognizes protection of public health and the improvement of health status as essential responsibilities of the public health system.

Traumatic brain injury can cause a wide range of functional changes affecting thinking, sensation, language, or emotions. It can also cause epilepsy and increase the risk for conditions such as Alzheimer's disease, Parkinson's disease, and other brain disorders that become more prevalent with age. The impact of a traumatic brain injury on the individual and family can be devastating.

The legislature recognizes that current programs and services are not funded or designed to address the diverse needs of this population. It is the intent of the legislature to develop a comprehensive plan to help individuals with traumatic brain injuries meet their needs. The legislature also recognizes the efforts of many in the private sector who are providing services and assistance to individuals with traumatic brain injuries. The legislature intends to bring together those in both the public and private sectors with expertise in this area to address the needs of this growing population. [2011 c 143 § 1; 2007 c 356 § 1.]

Short title—2007 c 356: "This act may be known and cited as the Tommy Manning act." [2007 c 356 § 11.]

74.31.020 Washington traumatic brain injury strategic partnership advisory council—Members—Expenses—Appointment—Duties. (1) The Washington traumatic brain injury strategic partnership advisory council is established as an advisory council to the governor, the legislature, and the secretary of the department of social and health services.

(2) The council shall be composed of:

(a) The following members who shall be appointed by the governor:

(i) A representative from a Native American tribe located in Washington state;

(ii) A representative from a nonprofit organization serving individuals with traumatic brain injury;

(iii) An individual with expertise in working with children with traumatic brain injuries;

(iv) A physician who has experience working with individuals with traumatic brain injuries;

(v) A neuropsychologist who has experience working with persons with traumatic brain injuries;

(vi) A social worker or clinical psychologist who has experience in working with persons who have sustained traumatic brain injuries;

(vii) A rehabilitation specialist, such as a speech pathologist, vocational rehabilitation counselor, occupational therapist, or physical therapist who has experience working with persons with traumatic brain injuries;

(viii) Two persons who are individuals with a traumatic brain injury;

(ix) Two persons who are family members of individuals with traumatic brain injuries; and

(x) Two members of the public who have experience with issues related to the causes of traumatic brain injuries; and

(b) The following agency members:

(i) The secretary or the secretary's designee, and representatives from the following: The children's administration, the division of behavioral health and recovery services, the aging and disability services administration, and the division of vocational rehabilitation;

(ii) The secretary of health or the secretary's designee;

(iii) The secretary of corrections or the secretary's designee;

(iv) A representative of the department of commerce with expertise in housing;

(v) A representative from the Washington state department of veterans affairs;

(vi) A representative from the national guard;

(vii) The executive director of the Washington protection and advocacy system or the executive director's designee; and

(viii) The executive director of the state brain injury association or the executive director's designee.

In the event that any of the state agencies designated in (b) of this subsection is renamed, reorganized, or eliminated, the director or secretary of the department that assumes the responsibilities of each renamed, reorganized, or eliminated agency shall designate a substitute representative.

(3) Councilmembers shall not be compensated for serving on the council, but may be reimbursed for all reasonable expenses related to costs incurred in participating in meetings for the council.

(4) No member may serve more than two consecutive terms.

(5) The appointed members of the council shall, to the extent possible, represent rural and urban areas of the state.

(6) A chairperson shall be elected every two years by majority vote from among the councilmembers. The chairperson shall act as the presiding officer of the council.

(7) The duties of the council include:

(a) Collaborating with the department to develop and revise as needed a comprehensive statewide plan to address the needs of individuals with traumatic brain injuries;

(b) Providing recommendations to the department on criteria to be used to select programs facilitating support groups for individuals with traumatic brain injuries and their families under RCW 74.31.050;

(c) By January 15, 2013, and every two years thereafter, developing a report in collaboration with the department and submitting it to the legislature and the governor on the following:

(i) Identifying the activities of the council in the implementation of the comprehensive statewide plan;

(ii) Recommendations for the revisions to the comprehensive statewide plan;

(iii) Recommendations for using the traumatic brain injury account established under RCW 74.31.060 to form strategic partnerships and to foster the development of services and supports for individuals impacted by traumatic brain injuries; and

(iv) Recommendations for a council staffing plan for council support under RCW 74.31.030.

(8) The council may utilize the advice or services of a nationally recognized expert, or other individuals as the council deems appropriate, to assist the council in carrying out its duties under this section. [2011 c 143 § 2; 2007 c 356 § 3.]

Short title—2007 c 356: See note following RCW 74.31.005.

74.31.030 Staff support—Department powers and duties—Comprehensive plan.

(1) In response to council recommendations developed pursuant to RCW 74.31.020, the department shall include in the comprehensive statewide plan a staffing plan for providing adequate support for council activities for positions funded by the traumatic brain injury account established in RCW 74.31.060 and designate at least one staff person who shall be responsible for the following:

(a) Coordinating policies, programs, and services for individuals with traumatic brain injuries; and

(b) Providing staff support to the council created in RCW 74.31.020.

(2) The department shall provide data and information to the council established under RCW 74.31.020 that is requested by the council and is in the possession or control of the department.

(3) The department shall implement, within funds appropriated for this specific purpose, the comprehensive statewide plan to address the needs of individuals impacted by traumatic brain injuries, including the use of public-private partnerships and a public awareness campaign. The comprehensive plan should be created in collaboration with the council and should consider the following:

(a) Building provider capacity and provider training;

(b) Improving the coordination of services;

(c) The feasibility of establishing agreements with private sector agencies or tribal governments to develop services for individuals with traumatic brain injuries; and

(d) Other areas the council deems appropriate.

(4) The department shall:

(a) Assure that information and referral services are provided to individuals with traumatic brain injuries. The referral services may be funded from the traumatic brain injury account established under RCW 74.31.060;

(b) Encourage and facilitate the following:

(i) Collaboration among state agencies that provide services to individuals with traumatic brain injuries;

(ii) Collaboration among organizations and entities that provide services to individuals with traumatic brain injuries; and

(iii) Community participation in program implementation; and

(c) Have the authority to accept, expend, or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purpose of this chapter. [2011 c 143 § 3; 2010 1st sp.s. c 37 § 943; 2007 c 356 § 4.]

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Short title—2007 c 356: See note following RCW 74.31.005.

74.31.040 Public awareness campaign. In collaboration with the council, the department shall conduct a public awareness campaign that utilizes funding from the traumatic brain injury account to leverage a private advertising campaign to persuade Washington residents to be aware and concerned about the issues facing individuals with traumatic brain injuries through all forms of media including television, radio, and print. [2011 c 143 § 4; 2007 c 356 § 5.]

Short title—2007 c 356: See note following RCW 74.31.005.

74.31.050 Support group programs—Funding—Recommendations. (1) The department shall provide funding from the traumatic brain injury account established by RCW 74.31.060 to programs that facilitate support groups to individuals with traumatic brain injuries and their families.

(2) The department shall use a request for proposal process to select the programs to receive funding. The council shall provide recommendations to the department on the criteria to be used in selecting the programs. [2011 c 143 § 5; 2007 c 356 § 6.]

Short title—2007 c 356: See note following RCW 74.31.005.

74.31.060 Traumatic brain injury account. The traumatic brain injury account is created in the state treasury. Two dollars of the fee imposed under RCW 46.63.110(7)(c) must be deposited into the account. Moneys in the account may be spent only after appropriation, and may be used only to support the activities in the statewide traumatic brain injury comprehensive plan, to provide a public awareness campaign and services relating to traumatic brain injury under RCW 74.31.040 and 74.31.050, for information and referral services, and for costs of required department staff who are providing support for the council under RCW 74.31.020 and 74.31.030. The secretary of the department of social and health services has the authority to administer the funds. [2011 c 143 § 6; 2010 1st sp.s. c 37 § 944; 2007 c 356 § 7.]

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Short title—2007 c 356: See note following RCW 74.31.005.

Chapter 74.34 RCW

ABUSE OF VULNERABLE ADULTS

Sections

74.34.020 Definitions. (*Effective until January 1, 2012.*)

74.34.020 Definitions. (*Effective January 1, 2012.*)

74.34.021 Repealed.

74.34.067 Investigations—Interviews—Ongoing case planning—Agreements with tribes—Conclusion of investigation.

74.34.305 Statement to vulnerable adults.

74.34.020 Definitions. (*Effective until January 1, 2012.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(3) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has

been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

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

(5) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed or certified by the department.

(6) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

(7) "Financial institution" has the same meaning as in RCW 30.22.040 and 30.22.041. For purposes of this chapter only, "financial institution" also means a "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.

(8) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW 11.88.010(1) (a), (b), (c), or (d).

(9) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(10) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(11) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(12) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental

health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

(13) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(14) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(15) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(16) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW. [2011 c 170 § 1; 2010 c 133 § 2; 2007 c 312 § 1; 2006 c 339 § 109; 2003 c 230 § 1; 1999 c 176 § 3; 1997 c 392 § 523; 1995 1st sp.s. c 18 § 84; 1984 c 97 § 8.]

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Effective date—2003 c 230: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 230 § 3.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Additional notes found at www.leg.wa.gov

74.34.020 Definitions. (Effective January 1, 2012.) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(3) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

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

(5) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed or certified by the department.

(6) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

(7) "Financial institution" has the same meaning as in RCW 30.22.040 and 30.22.041. For purposes of this chapter only, "financial institution" also means a "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.

(8) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW 11.88.010(1) (a), (b), (c), or (d).

(9) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(10) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(11) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(12) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

(13) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(14) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management,

social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(15) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(16) "Social worker" means:

(a) A social worker as defined in RCW 18.320.010(2); or

(b) Anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of vulnerable adults, or providing social services to vulnerable adults, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(17) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW. [2011 c 170 § 1; 2011 c 89 § 18; 2010 c 133 § 2; 2007 c 312 § 1; 2006 c 339 § 109; 2003 c 230 § 1; 1999 c 176 § 3; 1997 c 392 § 523; 1995 1st sp.s. c 18 § 84; 1984 c 97 § 8.]

Reviser's note: This section was amended by 2011 c 89 § 18 and by 2011 c 170 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Effective date—2003 c 230: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 230 § 3.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Additional notes found at www.leg.wa.gov

74.34.021 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.34.067 Investigations—Interviews—Ongoing case planning—Agreements with tribes—Conclusion of investigation. (1) Where appropriate, an investigation by the department may include a private interview with the vulnera-

ble adult regarding the alleged abandonment, abuse, financial exploitation, neglect, or self-neglect.

(2) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the vulnerable adult or adults harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult.

(3) The department may conduct ongoing case planning and consultation with: (a) Those persons or agencies required to report under this chapter or submit a report under this chapter; (b) consultants designated by the department; and (c) designated representatives of Washington Indian tribes if client information exchanged is pertinent to cases under investigation or the provision of protective services. Information considered privileged by statute and not directly related to reports required by this chapter must not be divulged without a valid written waiver of the privilege.

(4) The department shall prepare and keep on file a report of each investigation conducted by the department for a period of time in accordance with policies established by the department.

(5) If the department has reason to believe that the vulnerable adult has suffered from abandonment, abuse, financial exploitation, neglect, or self-neglect, and lacks the ability or capacity to consent, and needs the protection of a guardian, the department may bring a guardianship action under chapter 11.88 RCW.

(6) When the investigation is completed and the department determines that an incident of abandonment, abuse, financial exploitation, neglect, or self-neglect has occurred, the department shall inform the vulnerable adult of their right to refuse protective services, and ensure that, if necessary, appropriate protective services are provided to the vulnerable adult, with the consent of the vulnerable adult. The vulnerable adult has the right to withdraw or refuse protective services.

(7) The department's adult protective services division may enter into agreements with federally recognized tribes to investigate reports of abandonment, abuse, financial exploitation, neglect, or self-neglect of vulnerable adults on property over which a federally recognized tribe has exclusive jurisdiction. If the department has information that abandonment, abuse, financial exploitation, or neglect is criminal or is placing a vulnerable adult on tribal property at potential risk of personal or financial harm, the department may notify tribal law enforcement or another tribal representative specified by the tribe. Upon receipt of the notification, the tribe may assume jurisdiction of the matter. Neither the department nor its employees may participate in the investigation after the tribe assumes jurisdiction. The department, its officers, and its employees are not liable for any action or inaction of the tribe or for any harm to the alleged victim, the person against whom the allegations were made, or other parties that occurs after the tribe assumes jurisdiction. Nothing in this section limits the department's jurisdiction and authority over facilities or entities that the department licenses or certifies under federal or state law.

(8) The department may photograph a vulnerable adult or their environment for the purpose of providing documen-

tary evidence of the physical condition of the vulnerable adult or his or her environment. When photographing the vulnerable adult, the department shall obtain permission from the vulnerable adult or his or her legal representative unless immediate photographing is necessary to preserve evidence. However, if the legal representative is alleged to have abused, neglected, abandoned, or exploited the vulnerable adult, consent from the legal representative is not necessary. No such consent is necessary when photographing the physical environment.

(9) When the investigation is complete and the department determines that the incident of abandonment, abuse, financial exploitation, or neglect has occurred, the department shall inform the facility in which the incident occurred, consistent with confidentiality requirements concerning the vulnerable adult, witnesses, and complainants. [2011 c 170 § 2; 2007 c 312 § 2; 1999 c 176 § 9.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.305 Statement to vulnerable adults. (1) When the department opens an investigation of a report of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult, the department shall, at the time of the interview of the vulnerable adult who is an alleged victim, provide a written statement of the rights afforded under this chapter and other applicable law to alleged victims or legal guardians. This statement must include the department's name, address, and telephone number and may include other appropriate referrals. The statement must be substantially in the following form:

"You are entitled to be free from abandonment, abuse, financial exploitation, and neglect. If there is a reason to believe that you have experienced abandonment, abuse, financial exploitation, or neglect, you have the right to:

(a) Make a report to the department of social and health services and law enforcement and share any information you believe could be relevant to the investigation, and identify any persons you believe could have relevant information.

(b) Be free from retaliation for reporting or causing a report of abandonment, abuse, financial exploitation, or neglect.

(c) Be treated with dignity and addressed with respectful language.

(d) Reasonable accommodation for your disability when reporting, and during investigations and administrative proceedings.

(e) Request an order that prohibits anyone who has abandoned, abused, financially exploited, or neglected you from remaining in your home, having contact with you, or accessing your money or property.

(f) Receive from the department of social and health services information and appropriate referrals to other agencies that can advocate, investigate, or take action.

(g) Be informed of the status of investigations, proceedings, court actions, and outcomes by the agency that is handling any case in which you are a victim.

(h) Request referrals for advocacy or legal assistance to help with safety planning, investigations, and hearings.

(i) Complain to the department of social and health services, formally or informally, about investigations or proceedings, and receive a prompt response."

(2) This section shall not be construed to create any new cause of action or limit any existing remedy. [2011 c 170 § 3.]

Chapter 74.39A RCW

LONG-TERM CARE SERVICES OPTIONS—EXPANSION

Sections

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74.39A.050 Quality improvement principles. The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers consistent with chapter 392, Laws of 1997.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing or contract inspections, the department shall interview an appropriate percentage of residents, family members, resident case managers, and advocates in addition to interviewing providers and staff.

(3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

(5) Monitoring should be outcome based and responsive to consumer complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers, residents, and other interested parties.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) All long-term care workers shall be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Long-term care workers who are hired after January 1, 2014, are subject to background checks under RCW 74.39A.055. This information will be shared with the department of health in accordance with RCW 74.39A.055 to advance the purposes of chapter 2, Laws of 2009.

(8) No provider, or its staff, or long-term care worker, or prospective provider or long-term care worker, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(9) The department shall establish, by rule, a state registry which contains identifying information about long-term care workers identified under this chapter who have substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information. This information will also be shared with the department of health to advance the purposes of chapter 2, Laws of 2009.

(10) Until December 31, 2013, individual providers and home care agency providers must satisfactorily complete department-approved orientation, basic training, and continuing education within the time period specified by the department in rule. The department shall adopt rules by March 1, 2002, for the implementation of this section. The department shall deny payment to an individual provider or a home care provider who does not complete the training requirements within the time limit specified by the department by rule.

(11) Until December 31, 2013, in an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(12) The department shall create an approval system by March 1, 2002, for those seeking to conduct department-approved training.

(13) The department shall establish, by rule, background checks and other quality assurance requirements for long-term care workers who provide in-home services funded by medicaid personal care as described in RCW 74.09.520, community options program entry system waiver services as described in RCW 74.39A.030, or chore services as described in RCW 74.39A.110 that are equivalent to requirements for individual providers. Long-term care workers who are hired after January 1, 2014, are subject to background checks under RCW 74.39A.055.

(14) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

(15) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to test persons completing modules from a caregiver's class to verify that they have the transferable skills and competencies for entry into a nursing assistant training program. The department may review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health services and the nursing care quality assurance commission shall work together to develop an implementation plan by December 12, 1998. [2011 1st sp.s. c 31 § 5; 2009 c 580 § 7; 2009 c 2 § 14 (Initiative Measure No. 1029, approved November 4, 2008); 2004 c 140 § 6; 2000 c 121 § 10; 1999 c 336 § 5; 1998 c 85 § 1; 1997 c 392 § 209; 1995 1st sp.s. c 18 § 12.]

Effective date—2011 1st sp.s. c 31: See note following RCW 18.88B.020.

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

Finding—Intent—1999 c 336: See note following RCW 74.39.007.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Additional notes found at www.leg.wa.gov

74.39A.055 Criminal history checks on long-term care workers. (1) All long-term care workers for the elderly or persons with disabilities hired after January 1, 2014, shall be screened through state and federal background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. These background checks shall include checking against the federal bureau of investigation fingerprint identification records system and against the national sex offenders registry or their successor programs. The department shall require these long-term care workers to submit fingerprints for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation.

(2) To allow the department of health to satisfy its certification responsibilities under chapter 18.88B RCW, the department shall share state and federal background check results with the department of health. Neither department may share the federal background check results with any other state agency or person.

(3) The department shall not pass on the cost of these criminal background checks to the workers or their employers.

(4) The department shall adopt rules to implement the provisions of this section by August 1, 2013. [2011 1st sp.s. c 31 § 6; 2009 c 580 § 2; 2009 c 2 § 3 (Initiative Measure No. 1029, approved November 4, 2008).]

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

74.39A.073 Training requirements for long-term care workers. (1) Effective January 1, 2014, except as provided in RCW 18.88B.040, all persons employed as long-term care workers for the elderly or persons with disabilities must meet the minimum training requirements in this section within one hundred twenty calendar days of employment.

(2) All persons employed as long-term care workers must obtain seventy-five hours of entry-level training approved by the department. A long-term care worker must accomplish five of these seventy-five hours before becoming eligible to provide care.

(3) Training required by subsection (4)(c) of this section will be applied towards training required under RCW 18.20.270 or 70.128.230 as well as any statutory or regulatory training requirements for long-term care workers employed by supportive living providers.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The seventy-five hours of entry-level training required shall be as follows:

(a) Before a long-term care worker is eligible to provide care, he or she must complete two hours of orientation training regarding his or her role as caregiver and the applicable terms of employment;

(b) Before a long-term care worker is eligible to provide care, he or she must complete three hours of safety training, including basic safety precautions, emergency procedures, and infection control; and

(c) All long-term care workers must complete seventy hours of long-term care basic training, including training related to core competencies and population specific competencies.

(5) The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors on the competencies and training topics in this section.

(6) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

(7) The department of health shall adopt rules by August 1, 2013, to implement subsections (1), (2), and (3) of this section.

(8) The department shall adopt rules by August 1, 2013, to implement subsections (4) and (5) of this section. [2011 1st sp.s. c 31 § 7; 2009 c 580 § 10; 2009 c 2 § 5 (Initiative Measure No. 1029, approved November 4, 2008).]

Effective date—2011 c 31: See note following RCW 18.88B.020.

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

Continuing education requirements for long-term care workers: RCW 74.39A.340.

74.39A.075 Training requirements for individual providers caring for family members. (1) Effective January 1, 2014, a biological, step, or adoptive parent who is the individual provider only for his or her developmentally disabled son or daughter must receive twelve hours of training relevant to the needs of adults with developmental disabilities within the first one hundred twenty days of becoming an individual provider.

(2) Effective January 1, 2014, individual providers identified in this subsection must complete thirty-five hours of training within the first one hundred twenty days of becoming an individual provider. Five of the thirty-five hours must be completed before becoming eligible to provide care. Two of these five hours shall be devoted to an orientation training regarding an individual provider's role as caregiver and the applicable terms of employment, and three hours shall be devoted to safety training, including basic safety precautions, emergency procedures, and infection control. Individual providers subject to this requirement include an individual provider caring only for his or her biological, step, or adoptive child or parent unless covered by subsection (1) of this section.

(3) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(4) The department shall adopt rules by August 1, 2013, to implement this section. [2011 1st sp.s. c 31 § 8; 2009 c 580 § 11; 2009 c 2 § 8 (Initiative Measure No. 1029, approved November 4, 2008).]

Effective date—2011 1st sp.s. c 31: See note following RCW 18.88B.020.

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

74.39A.085 Enforcement actions against persons not certified as home care aides and their employers. (1) The department shall deny payment to any individual provider of home care services who has not been certified by the department of health as a home care aide as required under chapter 2, Laws of 2009 or, if exempted from certification by RCW 18.88B.040, has not completed his or her required training pursuant to chapter 2, Laws of 2009.

(2) The department may terminate the contract of any individual provider of home care services, or take any other enforcement measure deemed appropriate by the department if the individual provider's certification is revoked under chapter 2, Laws of 2009 or, if exempted from certification by RCW 18.88B.040, has not completed his or her required training pursuant to chapter 2, Laws of 2009.

(3) The department shall take appropriate enforcement action related to the contract of a private agency or facility licensed by the state, to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide as required under chapter 2, Laws of 2009 or, if exempted from certification by RCW 18.88B.040, has not completed his or her required training pursuant to chapter 2, Laws of 2009.

(4) Chapter 34.05 RCW shall govern actions by the department under this section.

(5) The department shall adopt rules by August 1, 2013, to implement this section. [2011 1st sp.s. c 31 § 9; 2009 c 580 § 14; 2009 c 2 § 12 (Initiative Measure No. 1029, approved November 4, 2008).]

Effective date—2011 1st sp.s. c 31: See note following RCW 18.88B.020.

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

Disciplinary action—Uncertified practice: RCW 18.88B.050.

74.39A.095 Case management services—Agency on aging oversight—Plan of care—Termination of contract—Rejection of individual provider. (1) In carrying out case management responsibilities established under RCW 74.39A.090 for consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider, each area agency on aging shall provide oversight of the care being provided to consumers receiving services under this section to the extent of available funding. Case management responsibilities incorporate this oversight, and include, but are not limited to:

(a) Verification that any individual provider has met any training requirements established by the department;

(b) Verification of a sample of worker time sheets;

(c) Monitoring the consumer's plan of care to verify that it adequately meets the needs of the consumer, through activ-

ities such as home visits, telephone contacts, and responses to information received by the area agency on aging indicating that a consumer may be experiencing problems relating to his or her home care;

(d) Reassessing and reauthorizing services;

(e) Monitoring of individual provider performance; and

(f) Conducting criminal background checks or verifying that criminal background checks have been conducted for any individual provider. Individual providers who are hired after January 1, 2014, are subject to background checks under RCW 74.39A.055.

(2) The area agency on aging case manager shall work with each consumer to develop a plan of care under this section that identifies and ensures coordination of health and long-term care services that meet the consumer's needs. In developing the plan, they shall utilize, and modify as needed, any comprehensive community service plan developed by the department as provided in RCW 74.39A.040. The plan of care shall include, at a minimum:

(a) The name and telephone number of the consumer's area agency on aging case manager, and a statement as to how the case manager can be contacted about any concerns related to the consumer's well-being or the adequacy of care provided;

(b) The name and telephone numbers of the consumer's primary health care provider, and other health or long-term care providers with whom the consumer has frequent contacts;

(c) A clear description of the roles and responsibilities of the area agency on aging case manager and the consumer receiving services under this section;

(d) The duties and tasks to be performed by the area agency on aging case manager and the consumer receiving services under this section;

(e) The type of in-home services authorized, and the number of hours of services to be provided;

(f) The terms of compensation of the individual provider;

(g) A statement by the individual provider that he or she has the ability and willingness to carry out his or her responsibilities relative to the plan of care; and

(h)(i) Except as provided in (h)(ii) of this subsection, a clear statement indicating that a consumer receiving services under this section has the right to waive any of the case management services offered by the area agency on aging under this section, and a clear indication of whether the consumer has, in fact, waived any of these services.

(ii) The consumer's right to waive case management services does not include the right to waive reassessment or reauthorization of services, or verification that services are being provided in accordance with the plan of care.

(3) Each area agency on aging shall retain a record of each waiver of services included in a plan of care under this section.

(4) Each consumer has the right to direct and participate in the development of their plan of care to the maximum practicable extent of their abilities and desires, and to be provided with the time and support necessary to facilitate that participation.

(5) A copy of the plan of care must be distributed to the consumer's primary care provider, individual provider, and

other relevant providers with whom the consumer has frequent contact, as authorized by the consumer.

(6) The consumer's plan of care shall be an attachment to the contract between the department, or their designee, and the individual provider.

(7) If the department or area agency on aging case manager finds that an individual provider's inadequate performance or inability to deliver quality care is jeopardizing the health, safety, or well-being of a consumer receiving service under this section, the department or the area agency on aging may take action to terminate the contract between the department and the individual provider. If the department or the area agency on aging has a reasonable, good faith belief that the health, safety, or well-being of a consumer is in imminent jeopardy, the department or area agency on aging may summarily suspend the contract pending a fair hearing. The consumer may request a fair hearing to contest the planned action of the case manager, as provided in chapter 34.05 RCW. The department may by rule adopt guidelines for implementing this subsection.

(8) The department or area agency on aging may reject a request by a consumer receiving services under this section to have a family member or other person serve as his or her individual provider if the case manager has a reasonable, good faith belief that the family member or other person will be unable to appropriately meet the care needs of the consumer. The consumer may request a fair hearing to contest the decision of the case manager, as provided in chapter 34.05 RCW. The department may by rule adopt guidelines for implementing this subsection. [2011 1st sp.s. c 31 § 14; 2011 1st sp.s. c 21 § 5; 2009 c 580 § 8; 2004 c 141 § 1; 2002 c 3 § 11 (Initiative Measure No. 775, approved November 6, 2001); 2000 c 87 § 5; 1999 c 175 § 3.]

Reviser's note: This section was amended by 2011 1st sp.s. c 21 § 5 and by 2011 1st sp.s. c 31 § 14, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

Findings—1999 c 175: See note following RCW 74.39A.090.

74.39A.220 Findings. The people of the state of Washington find as follows:

(1) Thousands of Washington seniors and persons with disabilities live independently in their own homes, which they prefer and is less costly than institutional care such as nursing homes.

(2) Many Washington seniors and persons with disabilities currently receive long-term in-home care services from individual providers hired directly by them under the medicare personal care, community options programs entry system, or chore services program.

(3) Quality long-term in-home care services allow Washington seniors, persons with disabilities, and their families the choice of allowing seniors and persons with disabilities to remain in their homes, rather than forcing them into institutional care such as nursing homes. Long-term in-home care services are also less costly, saving Washington taxpayers significant amounts through lower reimbursement rates.

[2011 1st sp.s. c 21 § 6; 2002 c 3 § 1 (Initiative Measure No. 775, approved November 6, 2001).]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Captions not law—2002 c 3 (Initiative Measure No. 775): "Captions used in this act are not any part of the law." [2002 c 3 § 16 (Initiative Measure No. 775, approved November 6, 2001).]

Severability—2002 c 3 (Initiative Measure No. 775): "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 3 § 17 (Initiative Measure No. 775, approved November 6, 2001).]

74.39A.230 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.39A.240 Definitions. The definitions in this section apply throughout RCW 74.39A.030 and 74.39A.095 and 74.39A.220 through 74.39A.300, and 41.56.026 unless the context clearly requires otherwise.

(1) "Consumer" means a person to whom an individual provider provides any such services.

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

(3) "Individual provider" means a person, including a personal aide, who has contracted with the department to provide personal care or respite care services to functionally disabled persons under the medicare personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270. [2011 1st sp.s. c 21 § 7; 2002 c 3 § 3 (Initiative Measure No. 775, approved November 6, 2001).]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.39A.250 Department duties. (1) The department shall provide assistance to consumers and prospective consumers in finding individual providers and prospective individual providers through the establishment of a referral registry of individual providers and prospective individual providers. Before placing an individual provider or prospective individual provider on the referral registry, the department shall determine that:

(a) The individual provider or prospective individual provider has met the minimum requirements for training set forth in RCW 74.39A.050;

(b) The individual provider or prospective individual provider has satisfactorily undergone a criminal background check conducted within the prior twelve months; and

(c) The individual provider or prospective individual provider is not listed on any long-term care abuse and neglect registry used by the department.

(2) The department shall remove from the referral registry any individual provider or prospective individual provider that does not meet the qualifications set forth in subsection (1) of this section or to have committed misfeasance or malfeasance in the performance of his or her duties as an individ-

ual provider. The individual provider or prospective individual provider, or the consumer to which the individual provider is providing services, may request a fair hearing to contest the removal from the referral registry, as provided in chapter 34.05 RCW.

(3) The department shall provide routine, emergency, and respite referrals of individual providers and prospective individual providers to consumers and prospective consumers who are authorized to receive long-term in-home care services through an individual provider.

(4) The department shall give preference in the recruiting, training, referral, and employment of individual providers and prospective individual providers to recipients of public assistance or other low-income persons who would qualify for public assistance in the absence of such employment. [2011 1st sp.s. c 21 § 8; 2002 c 3 § 4 (Initiative Measure No. 775, approved November 6, 2001).]

Effective date—2011 1st sp.s. c 21: See note following RCW 74.23.025.

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.39A.260 Department duties—Criminal background checks on individual providers. The department must perform criminal background checks for individual providers and prospective individual providers. Individual providers who are hired after January 1, 2014, are subject to background checks under RCW 74.39A.055. [2011 1st sp.s. c 31 § 10; 2011 1st sp.s. c 21 § 9; 2009 c 580 § 9; 2002 c 3 § 5 (Initiative Measure No. 775, approved November 6, 2001).]

Reviser's note: This section was amended by 2011 1st sp.s. c 21 § 9 and by 2011 1st sp.s. c 31 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 21: See note following RCW 74.23.025.

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.39A.270 Collective bargaining—Circumstances in which individual providers are considered public employees—Exceptions. (1) Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer, as defined in chapter 41.56 RCW, of individual providers, who, solely for the purposes of collective bargaining, are public employees as defined in chapter 41.56 RCW. To accommodate the role of the state as payor for the community-based services provided under this chapter and to ensure coordination with state employee collective bargaining under chapter 41.80 RCW and the coordination necessary to implement RCW 74.39A.300, the public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW. The governor or governor's designee shall periodically consult with the authority during the collective bargaining process to allow the authority to communicate issues relating to the long-term in-home care services received by consumers. The department shall solicit input from the developmental disabilities council, the governor's committee on disability issues and employment, the state council on aging, and other consumer advocacy organizations to obtain informed input

from consumers on their interests, including impacts on consumer choice, for all issues proposed for collective bargaining under subsections (5) and (6) of this section.

(2) Chapter 41.56 RCW governs the collective bargaining relationship between the governor and individual providers, except as otherwise expressly provided in this chapter and except as follows:

(a) The only unit appropriate for the purpose of collective bargaining under RCW 41.56.060 is a statewide unit of all individual providers;

(b) The showing of interest required to request an election under RCW 41.56.060 is ten percent of the unit, and any intervener seeking to appear on the ballot must make the same showing of interest;

(c) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

(i) With respect to commencement of negotiations between the governor and the bargaining representative of individual providers, negotiations shall be commenced by May 1st of any year prior to the year in which an existing collective bargaining agreement expires; and

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and fringe benefit provisions of the arbitrated collective bargaining agreement, is not binding on the authority or the state;

(d) Individual providers do not have the right to strike; and

(e) Individual providers who are related to, or family members of, consumers or prospective consumers are not, for that reason, exempt from this chapter or chapter 41.56 RCW.

(3) Individual providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state, its political subdivisions, or an area agency on aging for any purpose. Chapter 41.56 RCW applies only to the governance of the collective bargaining relationship between the employer and individual providers as provided in subsections (1) and (2) of this section.

(4) Consumers and prospective consumers retain the right to select, hire, supervise the work of, and terminate any individual provider providing services to them. Consumers may elect to receive long-term in-home care services from individual providers who are not referred to them by the authority.

(5) Except as expressly limited in this section and RCW 74.39A.300, the wages, hours, and working conditions of individual providers are determined solely through collective bargaining as provided in this chapter. No agency or department of the state may establish policies or rules governing the wages or hours of individual providers. However, this subsection does not modify:

(a) The department's authority to establish a plan of care for each consumer or its core responsibility to manage long-term in-home care services under this chapter, including determination of the level of care that each consumer is eligible to receive. However, at the request of the exclusive bargaining representative, the governor or the governor's designee appointed under chapter 41.80 RCW shall engage in col-

lective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over how the department's core responsibility affects hours of work for individual providers. This subsection shall not be interpreted to require collective bargaining over an individual consumer's plan of care;

(b) The department's authority to terminate its contracts with individual providers who are not adequately meeting the needs of a particular consumer, or to deny a contract under RCW 74.39A.095(8);

(c) The consumer's right to assign hours to one or more individual providers selected by the consumer within the maximum hours determined by his or her plan of care;

(d) The consumer's right to select, hire, terminate, supervise the work of, and determine the conditions of employment for each individual provider providing services to the consumer under this chapter;

(e) The department's obligation to comply with the federal medicaid statute and regulations and the terms of any community-based waiver granted by the federal department of health and human services and to ensure federal financial participation in the provision of the services; and

(f) The legislature's right to make programmatic modifications to the delivery of state services under this title, including standards of eligibility of consumers and individual providers participating in the programs under this title, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection (5)(f).

(6) At the request of the exclusive bargaining representative, the governor or the governor's designee appointed under chapter 41.80 RCW shall engage in collective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over employer contributions to the training partnership for the costs of: (a) Meeting all training and peer mentoring required under this chapter; and (b) other training intended to promote the career development of individual providers.

(7) The state, the department, the area agencies on aging, or their contractors under this chapter may not be held vicariously or jointly liable for the action or inaction of any individual provider or prospective individual provider, whether or not that individual provider or prospective individual provider was included on the referral registry or referred to a consumer or prospective consumer. The existence of a collective bargaining agreement, the placement of an individual provider on the referral registry, or the development or approval of a plan of care for a consumer who chooses to use the services of an individual provider and the provision of case management services to that consumer, by the department or an area agency on aging, does not constitute a special relationship with the consumer.

(8) Nothing in this section affects the state's responsibility with respect to unemployment insurance for individual providers. However, individual providers are not to be considered, as a result of the state assuming this responsibility, employees of the state. [2011 1st sp.s. c 21 § 10; 2007 c 361 § 7; 2007 c 278 § 3; 2006 c 106 § 1; 2004 c 3 § 1; 2002 c 3 § 6 (Initiative Measure No. 775, approved November 6, 2001).]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Effective date—2007 c 361 §§ 7 and 8: "Sections 7 and 8 of this act take effect March 1, 2008." [2007 c 361 § 14.]

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

Effective date—2006 c 106: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 17, 2006]." [2006 c 106 § 2.]

Severability—2004 c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 3 § 8.]

Effective date—2004 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 9, 2004]." [2004 c 3 § 9.]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.39A.280 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.39A.290 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.39A.330 Peer mentoring. Long-term care workers shall be offered on-the-job training or peer mentorship for at least one hour per week in the first ninety days of work from a long-term care worker who has completed at least twelve hours of mentor training and is mentoring no more than ten other workers at any given time. This requirement applies to long-term care workers who begin work on or after January 1, 2014. [2011 1st sp.s. c 31 § 11; 2009 c 478 § 1; 2007 c 361 § 3.]

Effective date—2011 1st sp.s. c 31: See note following RCW 18.88B.020.

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

74.39A.340 Continuing education requirements for long-term care workers. (1) The department of health shall ensure that all long-term care workers shall complete twelve hours of continuing education training in advanced training topics each year. This requirement applies beginning on July 1, 2014.

(2) Completion of continuing education as required in this section is a prerequisite to maintaining home care aide certification under chapter 2, Laws of 2009.

(3) Unless voluntarily certified as a home care aide under chapter 2, Laws of 2009, subsection (1) of this section does not apply to:

(a) An individual provider caring only for his or her biological, step, or adoptive child; and

(b) A person who is exempt under RCW 18.88B.040(1) so long as he or she maintains his or her credential in good standing.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(5) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

(6) The department of health shall adopt rules by August 1, 2013, to implement subsections (1), (2), and (3) of this section.

(7) The department shall adopt rules by August 1, 2013, to implement subsection (4) of this section. [2011 1st sp.s. c 31 § 12; 2009 c 580 § 12; 2009 c 2 § 9 (Initiative Measure No. 1029, approved November 4, 2008); 2007 c 361 § 4.]

Effective date—2011 1st sp.s. c 31: See note following RCW 18.88B.020.

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

74.39A.350 Advanced training. The department shall offer, directly or through contract, training opportunities sufficient for a long-term care worker to accumulate seventy hours of training within a reasonable time period. For individual providers represented by an exclusive bargaining representative under RCW 74.39A.270, the training opportunities shall be offered through the training partnership established under RCW 74.39A.360. Training topics shall include, but are not limited to: Client rights; personal care; mental illness; dementia; developmental disabilities; depression; medication assistance; advanced communication skills; positive client behavior support; developing or improving client-centered activities; dealing with wandering or aggressive client behaviors; medical conditions; nurse delegation core training; peer mentor training; and advocacy for quality care training. The department may not require long-term care workers to obtain the training described in this section. This requirement to offer advanced training applies beginning January 1, 2014. [2011 1st sp.s. c 31 § 13; 2009 c 580 § 13; 2009 c 2 § 10 (Initiative Measure No. 1029, approved November 4, 2008); 2007 c 361 § 5.]

Effective date—2011 1st sp.s. c 31: See note following RCW 18.88B.020.

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

74.39A.370 Addressing long-term care complaint workload. Subject to funding provided for this specific purpose, the department of social and health services shall use additional investigative resources to address a significant growth in the long-term care complaint workload. The department shall use the resulting licensor resources to meet current statutory requirements and timelines. "Complaints," as used in this section, include both complaints about provider practice, under chapters 70.128, 18.20, 18.51, and 74.42 RCW, and complaints about individuals alleged to have abused, neglected, abandoned, or exploited residents or clients, under chapter 74.34 RCW. [2011 1st sp.s. c 3 § 501.]

[2011 RCW Supp—page 1496]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

74.39A.380 Internal quality review and accountability program for residential care services—Quality assurance panel—Report. (1) Subject to funding provided for this specific purpose, the department of social and health services shall develop for phased-in implementation a statewide internal quality review and accountability program for residential care services. The program must be designed to enable the department to improve the accountability of staff and the consistent application of investigative activities across all long-term care settings, and must allow the systematic monitoring and evaluation of long-term care licensing and certification. The program must be designed to improve and standardize investigative outcomes for the vulnerable individuals at risk of abuse and neglect, and coordinate outcomes across the department to prevent perpetrators from changing settings and continuing to work with vulnerable adults.

(2) The department shall convene a quality assurance panel to review problems in the quality of care in adult family homes and to reduce incidents of abuse, neglect, abandonment, and financial exploitation. The state's long-term care ombudsman shall chair the panel and identify appropriate stakeholders to participate. The panel must consider inspection, investigation, public complaint, and enforcement issues that relate to adult family homes. The panel must also focus on oversight issues to address de minimus violations, processes for handling unresolved citations, and better ways to oversee new providers. The panel shall meet at least quarterly, and provide a report with recommendations to the governor's office, the senate health and long-term care committee, and the house of representatives health and wellness committee by December 1, 2012. [2011 1st sp.s. c 3 § 502.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Chapter 74.42 RCW

NURSING HOMES—RESIDENT CARE, OPERATING STANDARDS

Sections

74.42.010	Definitions. (<i>Effective until January 1, 2012.</i>)
74.42.010	Definitions. (<i>Effective January 1, 2012.</i>)
74.42.455	Transitional care management.

74.42.010 Definitions. (*Effective until January 1, 2012.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of social and health services and the department's employees.

(2) "Facility" refers to a nursing home as defined in RCW 18.51.010.

(3) "Licensed practical nurse" means a person licensed to practice practical nursing under chapter 18.79 RCW.

(4) "Medicaid" means Title XIX of the Social Security Act enacted by the social security amendments of 1965 (42 U.S.C. Sec. 1396; 79 Stat. 343), as amended.

(5) "Nurse practitioner" means a person licensed to practice advanced registered nursing under chapter 18.79 RCW.

(6) "Nursing care" means that care provided by a registered nurse, an advanced registered nurse practitioner, a licensed practical nurse, or a nursing assistant in the regular performance of their duties.

(7) "Physician" means a person practicing pursuant to chapter 18.57 or 18.71 RCW, including, but not limited to, a physician employed by the facility as provided in chapter 18.51 RCW.

(8) "Physician assistant" means a person practicing pursuant to chapter 18.57A or 18.71A RCW.

(9) "Qualified therapist" means:

(a) An activities specialist who has specialized education, training, or experience specified by the department.

(b) An audiologist who is eligible for a certificate of clinical competence in audiology or who has the equivalent education and clinical experience.

(c) A mental health professional as defined in chapter 71.05 RCW.

(d) An intellectual disabilities professional who is a qualified therapist or a therapist approved by the department and has specialized training or one year experience in treating or working with persons with intellectual or developmental disabilities.

(e) An occupational therapist who is a graduate of a program in occupational therapy or who has equivalent education or training.

(f) A physical therapist as defined in chapter 18.74 RCW.

(g) A social worker who is a graduate of a school of social work.

(h) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has equivalent education and clinical experience.

(10) "Registered nurse" means a person licensed to practice registered nursing under chapter 18.79 RCW.

(11) "Resident" means an individual residing in a nursing home, as defined in RCW 18.51.010. [2011 c 228 § 2; Prior: 2010 c 94 § 27; 1994 sp.s. c 9 § 750; 1993 c 508 § 4; 1979 ex.s. c 211 § 1.]

Purpose—2010 c 94: See note following RCW 44.04.280.

Additional notes found at www.leg.wa.gov

74.42.010 Definitions. (Effective January 1, 2012.)

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

(1) "Department" means the department of social and health services and the department's employees.

(2) "Facility" refers to a nursing home as defined in RCW 18.51.010.

(3) "Licensed practical nurse" means a person licensed to practice practical nursing under chapter 18.79 RCW.

(4) "Medicaid" means Title XIX of the Social Security Act enacted by the social security amendments of 1965 (42 U.S.C. Sec. 1396; 79 Stat. 343), as amended.

(5) "Nurse practitioner" means a person licensed to practice advanced registered nursing under chapter 18.79 RCW.

(6) "Nursing care" means that care provided by a registered nurse, an advanced registered nurse practitioner, a licensed practical nurse, or a nursing assistant in the regular performance of their duties.

(7) "Physician" means a person practicing pursuant to chapter 18.57 or 18.71 RCW, including, but not limited to, a physician employed by the facility as provided in chapter 18.51 RCW.

(8) "Physician assistant" means a person practicing pursuant to chapter 18.57A or 18.71A RCW.

(9) "Qualified therapist" means:

(a) An activities specialist who has specialized education, training, or experience specified by the department.

(b) An audiologist who is eligible for a certificate of clinical competence in audiology or who has the equivalent education and clinical experience.

(c) A mental health professional as defined in chapter 71.05 RCW.

(d) An intellectual disabilities professional who is a qualified therapist or a therapist approved by the department and has specialized training or one year experience in treating or working with persons with intellectual or developmental disabilities.

(e) An occupational therapist who is a graduate of a program in occupational therapy or who has equivalent education or training.

(f) A physical therapist as defined in chapter 18.74 RCW.

(g) A social worker as defined in RCW 18.320.010(2).

(h) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has equivalent education and clinical experience.

(10) "Registered nurse" means a person licensed to practice registered nursing under chapter 18.79 RCW.

(11) "Resident" means an individual residing in a nursing home, as defined in RCW 18.51.010. [2011 c 228 § 2; 2011 c 89 § 19; Prior: 2010 c 94 § 27; 1994 sp.s. c 9 § 750; 1993 c 508 § 4; 1979 ex.s. c 211 § 1.]

Reviser's note: This section was amended by 2011 c 89 § 19 and by 2011 c 228 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Purpose—2010 c 94: See note following RCW 44.04.280.

Additional notes found at www.leg.wa.gov

74.42.455 Transitional care management. (1) Nursing facilities may provide telephone or web-based transitional care management services to persons discharged from the facility to home for up to thirty days postdischarge.

(2) When a nursing facility provides transitional care management services, the facility must coordinate postdischarge care and service needs with in-home agencies licensed under chapter 70.127 RCW, and other authorized care providers, to promote evidence-based transition care planning. In-home service agencies and other authorized care providers, including the department, shall, when appropriate, determine resident eligibility for postdischarge care and services and coordinate with nursing facilities to plan a safe transition of the client to the home setting. When a resident is discharged to home and is without in-home care or services due to the resident's refusal of care or their ineligibility for care, the nursing facility may provide telephone or web-based transitional care management services. These services may

include care coordination services, review of the discharge plan, instructions to promote compliance with the discharge plan, reminders or assistance with scheduling follow-up appointments with other health care professionals consistent with the discharge plan, and promotion of self-management of the client's health condition. Web-based transition care services may include patient education and the provision of services described in this section. They are not intended to include telehealth monitoring.

(3) If the nursing facility identifies concerns in client care that result from telephone or web-based transitional care management services, the nursing facility will notify the client's primary care physician. The nursing facility will also discuss with the client options for care or other services which may include in-home services provided by agencies licensed under chapter 70.127 RCW. [2011 c 366 § 7.]

Findings—Purpose—Conflict with federal requirements—2011 c 366: See notes following RCW 18.20.020.

Chapter 74.46 RCW NURSING FACILITY MEDICAID PAYMENT SYSTEM

Sections

74.46.431	Nursing facility medicaid payment rate allocations—Components—Minimum wage—Rules.
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74.46.521	Operations component rate allocation—Determination.
74.46.541	Skilled nursing facility safety net assessment—Reimbursement of medicaid share.

74.46.431 Nursing facility medicaid payment rate allocations—Components—Minimum wage—Rules. (1) Nursing facility medicaid payment rate allocations shall be facility-specific and shall have six components: Direct care, therapy care, support services, operations, property, and financing allowance. The department shall establish and adjust each of these components, as provided in this section and elsewhere in this chapter, for each medicaid nursing facility in this state.

(2) Component rate allocations in therapy care and support services for all facilities shall be based upon a minimum facility occupancy of eighty-five percent of licensed beds, regardless of how many beds are set up or in use. Component rate allocations in operations, property, and financing allowance for essential community providers shall be based upon a minimum facility occupancy of eighty-seven percent of licensed beds, regardless of how many beds are set up or in use. Component rate allocations in operations, property, and financing allowance for small nonessential community providers shall be based upon a minimum facility occupancy of ninety-two percent of licensed beds, regardless of how many beds are set up or in use. Component rate allocations in operations, property, and financing allowance for large nonessen-

tial community providers shall be based upon a minimum facility occupancy of ninety-five percent of licensed beds, regardless of how many beds are set up or in use. For all facilities, the component rate allocation in direct care shall be based upon actual facility occupancy. The median cost limits used to set component rate allocations shall be based on the applicable minimum occupancy percentage. In determining each facility's therapy care component rate allocation under RCW 74.46.511, the department shall apply the applicable minimum facility occupancy adjustment before creating the array of facilities' adjusted therapy costs per adjusted resident day. In determining each facility's support services component rate allocation under RCW 74.46.515(3), the department shall apply the applicable minimum facility occupancy adjustment before creating the array of facilities' adjusted support services costs per adjusted resident day. In determining each facility's operations component rate allocation under RCW 74.46.521(3), the department shall apply the minimum facility occupancy adjustment before creating the array of facilities' adjusted general operations costs per adjusted resident day.

(3) Information and data sources used in determining medicaid payment rate allocations, including formulas, procedures, cost report periods, resident assessment instrument formats, resident assessment methodologies, and resident classification and case mix weighting methodologies, may be substituted or altered from time to time as determined by the department.

(4)(a) Direct care component rate allocations shall be established using adjusted cost report data covering at least six months. Effective July 1, 2009, the direct care component rate allocation shall be rebased, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2013. Beginning July 1, 2013, the direct care component rate allocation shall be rebased biennially during every odd-numbered year thereafter using adjusted cost report data from two years prior to the rebase period, so adjusted cost report data for calendar year 2011 is used for July 1, 2013, through June 30, 2015, and so forth.

(b) Direct care component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the direct care component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the direct care component rate allocation established in accordance with this chapter.

(5)(a) Therapy care component rate allocations shall be established using adjusted cost report data covering at least six months. Effective July 1, 2009, the therapy care component rate allocation shall be cost rebased, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2013. Beginning July 1, 2013, the therapy

care component rate allocation shall be rebased biennially during every odd-numbered year thereafter using adjusted cost report data from two years prior to the rebase period, so adjusted cost report data for calendar year 2011 is used for July 1, 2013, through June 30, 2015, and so forth.

(b) Therapy care component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the therapy care component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the therapy care component rate allocation established in accordance with this chapter.

(6)(a) Support services component rate allocations shall be established using adjusted cost report data covering at least six months. Effective July 1, 2009, the support services component rate allocation shall be cost rebased, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2013. Beginning July 1, 2013, the support services component rate allocation shall be rebased biennially during every odd-numbered year thereafter using adjusted cost report data from two years prior to the rebase period, so adjusted cost report data for calendar year 2011 is used for July 1, 2013, through June 30, 2015, and so forth.

(b) Support services component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the support services component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the support services component rate allocation established in accordance with this chapter.

(7)(a) Operations component rate allocations shall be established using adjusted cost report data covering at least six months. Effective July 1, 2009, the operations component rate allocation shall be cost rebased, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2013. Beginning July 1, 2013, the operations care component rate allocation shall be rebased biennially during every odd-numbered year thereafter using adjusted cost report data from two years prior to the rebase period, so adjusted cost report data for calendar year 2011 is used for July 1, 2013, through June 30, 2015, and so forth.

(b) Operations component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the operations component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the operations component rate allocation established in accordance with this chapter.

(8) Total payment rates under the nursing facility Medicaid payment system shall not exceed facility rates charged to the general public for comparable services.

(9) The department shall establish in rule procedures, principles, and conditions for determining component rate allocations for facilities in circumstances not directly addressed by this chapter, including but not limited to: Inflation adjustments for partial-period cost report data, newly constructed facilities, existing facilities entering the Medicaid program for the first time or after a period of absence from the program, existing facilities with expanded new bed capacity, existing Medicaid facilities following a change of ownership of the nursing facility business, facilities temporarily reducing the number of set-up beds during a remodel, facilities having less than six months of either resident assessment, cost report data, or both, under the current contractor prior to rate setting, and other circumstances.

(10) The department shall establish in rule procedures, principles, and conditions, including necessary threshold costs, for adjusting rates to reflect capital improvements or new requirements imposed by the department or the federal government. Any such rate adjustments are subject to the provisions of RCW 74.46.421.

(11) Effective July 1, 2010, there shall be no rate adjustment for facilities with banked beds. For purposes of calculating minimum occupancy, licensed beds include any beds banked under chapter 70.38 RCW.

(12) Facilities obtaining a certificate of need or a certificate of need exemption under chapter 70.38 RCW after June 30, 2001, must have a certificate of capital authorization in order for (a) the depreciation resulting from the capitalized addition to be included in calculation of the facility's property component rate allocation; and (b) the net invested funds associated with the capitalized addition to be included in calculation of the facility's financing allowance rate allocation. [2011 1st sp.s. c 7 § 1; 2010 1st sp.s. c 34 § 3; 2009 c 570 § 1; 2008 c 263 § 2; 2007 c 508 § 2; 2006 c 258 § 2; 2005 c 518 § 944; 2004 c 276 § 913; 2001 1st sp.s. c 8 § 5; 1999 c 353 § 4; 1998 c 322 § 19.]

Analysis—2011 1st sp.s. c 7: "(1) For fiscal years 2012 and 2013 and subject to appropriation, the department of social and health services shall do a comparative analysis of the facility-based payment rates calculated on July 1, 2011, using the payment methodology defined in chapter 74.46 RCW as modified by RCW 74.46.431, 74.46.435, 74.46.437, 74.46.485, 74.46.496, 74.46.501, 74.46.506, 74.46.515, and 74.46.521, to the facility-based payment rates in effect June 30, 2010. If the facility-based payment rate calcu-

lated on July 1, 2011, is smaller than the facility-based payment rate on June 30, 2011, the difference shall be provided to the individual nursing facilities as an add-on payment per medicaid resident day.

(2) During the comparative analysis performed in subsection (1) of this section, if it is found that the direct care rate for any facility calculated under RCW 74.46.431, 74.46.435, 74.46.437, 74.46.485, 74.46.496, 74.46.501, 74.46.506, 74.46.515, and 74.46.521 is greater than the direct care rate in effect on June 30, 2010, then the facility shall receive a ten percent direct care rate add-on to compensate that facility for taking on more acute clients than they have in the past.

(3) The rate add-ons provided in subsection (2) of this section are subject to the reconciliation and settlement process provided in RCW 74.46.022(6). [2011 1st sp.s. c 7 § 11.]

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

Effective date—2009 c 570: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 570 § 3.]

Effective date—2007 c 508: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 508 § 8.]

Effective date—2006 c 258: See note following RCW 74.46.020.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Additional notes found at www.leg.wa.gov

74.46.433 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.435 Property component rate allocation. (1) The property component rate allocation for each facility shall be determined by dividing the sum of the reported allowable prior period actual depreciation, subject to department rule, adjusted for any capitalized additions or replacements approved by the department, and the retained savings from such cost center, by the greater of a facility's total resident days in the prior period or resident days as calculated on eighty-seven percent facility occupancy for essential community providers, ninety-two percent occupancy for small non-essential community providers, or ninety-five percent facility occupancy for large nonessential community providers. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the property component rate shall be adjusted to anticipated resident day level.

(2) A nursing facility's property component rate allocation shall be rebased annually, effective July 1st, in accordance with this section and this chapter.

(3) When a certificate of need for a new facility is requested, the department, in reaching its decision, shall take into consideration per-bed land and building construction costs for the facility which shall not exceed a maximum to be established by the secretary.

(4) The property component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [2011 1st sp.s. c

7 § 2; 2010 1st sp.s. c 34 § 5; 2001 1st sp.s. c 8 § 7; 1999 c 353 § 10; 1998 c 322 § 29.]

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Analysis—2011 1st sp.s. c 7: See note following RCW 74.46.431.

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Additional notes found at www.leg.wa.gov

74.46.437 Financing allowance component rate allocation. (1) The department shall establish for each medicaid nursing facility a financing allowance component rate allocation. The financing allowance component rate shall be rebased annually, effective July 1st, in accordance with the provisions of this section and this chapter.

(2) The financing allowance is determined by multiplying the net invested funds of each facility by .04, and dividing by the greater of a nursing facility's total resident days from the most recent cost report period or resident days calculated on eighty-seven percent facility occupancy for essential community providers, ninety-two percent facility occupancy for small nonessential community providers, or ninety-five percent occupancy for large nonessential community providers. If a capitalized addition, renovation, replacement, or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the financing allowance shall be adjusted to the greater of the anticipated resident day level or eighty-seven percent of the new licensed bed capacity for essential community providers, ninety-two percent facility occupancy for small nonessential community providers, or ninety-five percent occupancy for large nonessential community providers.

(3) In computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in department rule, including owned and leased assets, shall be utilized, except that the capitalized cost of land upon which the facility is located and such other contiguous land which is reasonable and necessary for use in the regular course of providing resident care must also be included. Subject to provisions and limitations contained in this chapter, for land purchased by owners or lessors before July 18, 1984, capitalized cost of land is the buyer's capitalized cost. For all partial or whole rate periods after July 17, 1984, if the land is purchased after July 17, 1984, capitalized cost is that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower. In the case of leased facilities where the net invested funds are unknown or the contractor is unable to provide necessary information to determine net invested funds, the secretary has the authority to determine an amount for net invested funds based on an appraisal conducted according to department rule.

(4) The financing allowance rate allocation calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [2011 1st sp.s. c 7 § 3; 2001 1st sp.s. c 8 § 8; 1999 c 353 § 11.]

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Analysis—2011 1st sp.s. c 7: See note following RCW 74.46.431.

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Additional notes found at www.leg.wa.gov

74.46.485 Case mix classification methodology—Notice of implementation. (1) The department shall:

(a) Employ the resource utilization group III case mix classification methodology. The department shall use the forty-four group index maximizing model for the resource utilization group III grouper version 5.10, but the department may revise or update the classification methodology to reflect advances or refinements in resident assessment or classification, subject to federal requirements. The department may adjust the case mix index for any of the lowest ten resource utilization group categories beginning with PA1 through PE2 to any case mix index that aids in achieving the purpose and intent of RCW 74.39A.007 and cost-efficient care; and

(b) Implement minimum data set 3.0 under the authority of this section and RCW 74.46.431(3). The department must notify nursing home contractors twenty-eight days in advance the date of implementation of the minimum data set 3.0. In the notification, the department must identify for all semiannual rate settings following the date of minimum data set 3.0 implementation a previously established semiannual case mix adjustment established for the semiannual rate settings that will be used for semiannual case mix calculations in direct care until minimum data set 3.0 is fully implemented.

(2) A default case mix group shall be established for cases in which the resident dies or is discharged for any purpose prior to completion of the resident's initial assessment. The default case mix group and case mix weight for these cases shall be designated by the department.

(3) A default case mix group may also be established for cases in which there is an untimely assessment for the resident. The default case mix group and case mix weight for these cases shall be designated by the department. [2011 1st sp.s. c 7 § 4; 2010 1st sp.s. c 34 § 9; 2009 c 570 § 2; 1998 c 322 § 22.]

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Analysis—2011 1st sp.s. c 7: See note following RCW 74.46.431.

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

Effective date—2009 c 570: See note following RCW 74.46.431.

74.46.496 Case mix weights—Determination—Revisions. (1) Each case mix classification group shall be assigned a case mix weight. The case mix weight for each resident of a nursing facility for each calendar quarter or six-month period during a calendar year shall be based on data from resident assessment instruments completed for the resident and weighted by the number of days the resident was in each case mix classification group. Days shall be counted as provided in this section.

(2) The case mix weights shall be based on the average minutes per registered nurse, licensed practical nurse, and certified nurse aide, for each case mix group, and using the United States department of health and human services nursing facility staff time measurement study. Those minutes shall be weighted by statewide ratios of registered nurse to

certified nurse aide, and licensed practical nurse to certified nurse aide, wages, including salaries and benefits, which shall be based on cost report data for this state.

(3) The case mix weights shall be determined as follows:

(a) Set the certified nurse aide wage weight at 1.000 and calculate wage weights for registered nurse and licensed practical nurse average wages by dividing the certified nurse aide average wage into the registered nurse average wage and licensed practical nurse average wage;

(b) Calculate the total weighted minutes for each case mix group in the resource utilization group classification system by multiplying the wage weight for each worker classification by the average number of minutes that classification of worker spends caring for a resident in that resource utilization group classification group, and summing the products;

(c) Assign the lowest case mix weight to the resource utilization group with the lowest total weighted minutes and calculate case mix weights by dividing the lowest group's total weighted minutes into each group's total weighted minutes and rounding weight calculations to the third decimal place.

(4) The case mix weights in this state may be revised if the United States department of health and human services updates its nursing facility staff time measurement studies. The case mix weights shall be revised, but only when direct care component rates are cost-rebased as provided in subsection (5) of this section, to be effective on the July 1st effective date of each cost-rebased direct care component rate. However, the department may revise case mix weights more frequently if, and only if, significant variances in wage ratios occur among direct care staff in the different caregiver classifications identified in this section.

(5) Case mix weights shall be revised when direct care component rates are cost-rebased as provided in RCW 74.46.431(4). [2011 1st sp.s. c 7 § 5; 2010 1st sp.s. c 34 § 10; 2006 c 258 § 4; 1998 c 322 § 23.]

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Analysis—2011 1st sp.s. c 7: See note following RCW 74.46.431.

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

Effective date—2006 c 258: See note following RCW 74.46.020.

74.46.501 Average case mix indexes determined quarterly—Facility average case mix index—Medicaid average case mix index. (1) From individual case mix weights for the applicable quarter, the department shall determine two average case mix indexes for each medicaid nursing facility, one for all residents in the facility, known as the facility average case mix index, and one for medicaid residents, known as the medicaid average case mix index.

(2)(a) In calculating a facility's two average case mix indexes for each quarter, the department shall include all residents or medicaid residents, as applicable, who were physically in the facility during the quarter in question based on the resident assessment instrument completed by the facility and the requirements and limitations for the instrument's completion and transmission (January 1st through March 31st, April 1st through June 30th, July 1st through September 30th, or October 1st through December 31st).

(b) The facility average case mix index shall exclude all default cases as defined in this chapter. However, the medicaid average case mix index shall include all default cases.

(3) Both the facility average and the medicaid average case mix indexes shall be determined by multiplying the case mix weight of each resident, or each medicaid resident, as applicable, by the number of days, as defined in this section and as applicable, the resident was at each particular case mix classification or group, and then averaging.

(4) In determining the number of days a resident is classified into a particular case mix group, the department shall determine a start date for calculating case mix grouping periods as specified by rule.

(5) The cutoff date for the department to use resident assessment data, for the purposes of calculating both the facility average and the medicaid average case mix indexes, and for establishing and updating a facility's direct care component rate, shall be one month and one day after the end of the quarter for which the resident assessment data applies.

(6)(a) Although the facility average and the medicaid average case mix indexes shall both be calculated quarterly, the cost-rebasing period facility average case mix index will be used throughout the applicable cost-rebasing period in combination with cost report data as specified by RCW 74.46.431 and 74.46.506, to establish a facility's allowable cost per case mix unit. To allow for the transition to minimum data set 3.0 and implementation of resource utilization group IV for July 1, 2011, through June 30, 2013, the department shall calculate rates using the medicaid average case mix scores effective for January 1, 2011, rates adjusted under RCW 74.46.485(1)(a), and the scores shall be increased each six months during the transition period by one-half of one percent. The July 1, 2013, direct care cost per case mix unit shall be calculated by utilizing 2011 direct care costs, patient days, and 2011 facility average case mix indexes based on the minimum data set 3.0 resource utilization group IV grouper 57. A facility's medicaid average case mix index shall be used to update a nursing facility's direct care component rate semiannually.

(b) The facility average case mix index used to establish each nursing facility's direct care component rate shall be based on an average of calendar quarters of the facility's average case mix indexes from the four calendar quarters occurring during the cost report period used to rebase the direct care component rate allocations as specified in RCW 74.46.431.

(c) The medicaid average case mix index used to update or recalibrate a nursing facility's direct care component rate semiannually shall be from the calendar six-month period commencing nine months prior to the effective date of the semiannual rate. For example, July 1, 2010, through December 31, 2010, direct care component rates shall utilize case mix averages from the October 1, 2009, through March 31, 2010, calendar quarters, and so forth. [2011 1st sp.s. c 7 § 6; 2010 1st sp.s. c 34 § 11; 2006 c 258 § 5; 2001 1st sp.s. c 8 § 9; 1998 c 322 § 24.]

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Analysis—2011 1st sp.s. c 7: See note following RCW 74.46.431.

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

Effective date—2006 c 258: See note following RCW 74.46.020.

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

74.46.506 Direct care component rate allocations—Determination—Quarterly updates—Fines. (1) The direct care component rate allocation corresponds to the provision of nursing care for one resident of a nursing facility for one day, including direct care supplies. Therapy services and supplies, which correspond to the therapy care component rate, shall be excluded. The direct care component rate includes elements of case mix determined consistent with the principles of this section and other applicable provisions of this chapter.

(2) The department shall determine and update semiannually for each nursing facility serving medicaid residents a facility-specific per-resident day direct care component rate allocation, to be effective on the first day of each six-month period. In determining direct care component rates the department shall utilize, as specified in this section, minimum data set resident assessment data for each resident of the facility, as transmitted to, and if necessary corrected by, the department in the resident assessment instrument format approved by federal authorities for use in this state.

(3) The department may question the accuracy of assessment data for any resident and utilize corrected or substitute information, however derived, in determining direct care component rates. The department is authorized to impose civil fines and to take adverse rate actions against a contractor, as specified by the department in rule, in order to obtain compliance with resident assessment and data transmission requirements and to ensure accuracy.

(4) Cost report data used in setting direct care component rate allocations shall be for rate periods as specified in RCW 74.46.431(4)(a).

(5) The department shall rebase each nursing facility's direct care component rate allocation as described in RCW 74.46.431, adjust its direct care component rate allocation for economic trends and conditions as described in RCW 74.46.431, and update its medicaid average case mix index as described in RCW 74.46.496 and 74.46.501, consistent with the following:

(a) Adjust total direct care costs reported by each nursing facility for the applicable cost report period specified in RCW 74.46.431(4)(a) to reflect any department adjustments, and to eliminate reported resident therapy costs and adjustments, in order to derive the facility's total allowable direct care cost;

(b) Divide each facility's total allowable direct care cost by its adjusted resident days for the same report period, to derive the facility's allowable direct care cost per resident day;

(c) Divide each facility's adjusted allowable direct care cost per resident day by the facility average case mix index for the applicable quarters specified by RCW 74.46.501(6)(b) to derive the facility's allowable direct care cost per case mix unit;

(d) Divide nursing facilities into at least two and, if applicable, three peer groups: Those located in nonurban counties; those located in high labor-cost counties, if any; and those located in other urban counties;

(e) Array separately the allowable direct care cost per case mix unit for all facilities in nonurban counties; for all facilities in high labor-cost counties, if applicable; and for all facilities in other urban counties, and determine the median allowable direct care cost per case mix unit for each peer group;

(f) Determine each facility's semiannual direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is greater than one hundred ten percent of the peer group median established under (e) of this subsection shall be assigned a cost per case mix unit equal to one hundred ten percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable six-month period specified in RCW 74.46.501(6)(c);

(ii) Any facility whose allowable cost per case mix unit is less than or equal to one hundred ten percent of the peer group median established under (e) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable six-month period specified in RCW 74.46.501(6)(c).

(6) The direct care component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

(7) Costs related to payments resulting from increases in direct care component rates, granted under authority of RCW 74.46.508 for a facility's exceptional care residents, shall be offset against the facility's examined, allowable direct care costs, for each report year or partial period such increases are paid. Such reductions in allowable direct care costs shall be for rate setting, settlement, and other purposes deemed appropriate by the department. [2011 1st sp.s. c 7 § 7; 2010 1st sp.s. c 34 § 12; 2007 c 508 § 3; 2006 c 258 § 6; 2001 1st sp.s. c 8 § 10. Prior: 1999 c 353 § 5; 1999 c 181 § 1; 1998 c 322 § 25.]

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Analysis—2011 1st sp.s. c 7: See note following RCW 74.46.431.

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

Effective date—2007 c 508: See note following RCW 74.46.431.

Effective date—2006 c 258: See note following RCW 74.46.020.

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Additional notes found at www.leg.wa.gov

74.46.515 Support services component rate allocation—Determination—Emergency situations. (1) The support services component rate allocation corresponds to the provision of food, food preparation, dietary, housekeeping, and laundry services for one resident for one day.

(2) The department shall determine each medicaid nursing facility's support services component rate allocation using cost report data specified by RCW 74.46.431(6).

(3) To determine each facility's support services component rate allocation, the department shall:

(a) Array facilities' adjusted support services costs per adjusted resident day, as determined by dividing each facil-

ity's total allowable support services costs by its adjusted resident days for the same report period, increased if necessary to a minimum occupancy provided by RCW 74.46.431(2), for each facility from facilities' cost reports from the applicable report year, for facilities located within urban counties, and for those located within nonurban counties and determine the median adjusted cost for each peer group;

(b) Set each facility's support services component rate at the lower of the facility's per resident day adjusted support services costs from the applicable cost report period or the adjusted median per resident day support services cost for that facility's peer group, either urban counties or nonurban counties, plus eight percent; and

(c) Adjust each facility's support services component rate for economic trends and conditions as provided in RCW 74.46.431(6).

(4) The support services component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [2011 1st sp.s. c 7 § 8; 2010 1st sp.s. c 34 § 15; 2008 c 263 § 4; 2001 1st sp.s. c 8 § 12; 1999 c 353 § 7; 1998 c 322 § 27.]

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Analysis—2011 1st sp.s. c 7: See note following RCW 74.46.431.

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Additional notes found at www.leg.wa.gov

74.46.521 Operations component rate allocation—Determination. (1) The operations component rate allocation corresponds to the general operation of a nursing facility for one resident for one day, including but not limited to management, administration, utilities, office supplies, accounting and bookkeeping, minor building maintenance, minor equipment repairs and replacements, and other supplies and services, exclusive of direct care, therapy care, support services, property, financing allowance, and variable return.

(2) The department shall determine each medicaid nursing facility's operations component rate allocation using cost report data specified by RCW 74.46.431(7)(a). Operations component rates for essential community providers shall be based upon a minimum occupancy of eighty-seven percent of licensed beds. Operations component rates for small nonessential community providers shall be based upon a minimum occupancy of ninety-two percent of licensed beds. Operations component rates for large nonessential community providers shall be based upon a minimum occupancy of ninety-five percent of licensed beds.

(3) For all calculations and adjustments in this subsection, the department shall use the greater of the facility's actual occupancy or an occupancy equal to eighty-seven percent for essential community providers, ninety-two percent for small nonessential community providers, or ninety-five percent for large nonessential community providers. To determine each facility's operations component rate the department shall:

(a) Array facilities' adjusted general operations costs per adjusted resident day, as determined by dividing each facility's total allowable operations cost by its adjusted resident

days for the same report period for facilities located within urban counties and for those located within nonurban counties and determine the median adjusted cost for each peer group;

(b) Set each facility's operations component rate at the lower of:

(i) The facility's per resident day adjusted operations costs from the applicable cost report period adjusted if necessary for minimum occupancy; or

(ii) The adjusted median per resident day general operations cost for that facility's peer group, urban counties or nonurban counties; and

(c) Adjust each facility's operations component rate for economic trends and conditions as provided in RCW 74.46.431(7)(b).

(4) The operations component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [2011 1st sp.s. c 7 § 9; 2010 1st sp.s. c 34 § 16; 2007 c 508 § 5; 2006 c 258 § 7; 2001 1st sp.s. c 8 § 13; 1999 c 353 § 8; 1998 c 322 § 28.]

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Analysis—2011 1st sp.s. c 7: See note following RCW 74.46.431.

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

Effective date—2007 c 508: See note following RCW 74.46.431.

Effective date—2006 c 258: See note following RCW 74.46.020.

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Additional notes found at www.leg.wa.gov

74.46.541 Skilled nursing facility safety net assessment—Reimbursement of medicaid share. (1) The department shall establish a skilled nursing facility safety net assessment medicaid share pass through or rate add-on to reimburse the medicaid share of the skilled nursing facility safety net assessment as a medicaid allowable cost consistent with RCW 74.48.030. This add-on shall not be considered an allowable cost for future year cost rebasing.

(2) As of July 1, 2011, supplemental payments to reimburse medicaid expenditures, including an amount to reimburse the medicaid share of the skilled nursing facility safety net assessment, not to exceed the annual medicare upper payment limit, must be provided for all years when the skilled nursing facility safety net assessment is levied, consistent with RCW 74.48.030. These supplemental payments, at a minimum, must be sufficient to reimburse the medicaid share of the assessment for those paying the assessment. The part of these supplemental payments that reimburses the medicaid share of the assessment are not subject to the reconciliation and settlement process provided in RCW 74.46.022(6). [2011 1st sp.s. c 7 § 10.]

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Chapter 74.48 RCW

SKILLED NURSING FACILITY SAFETY NET ASSESSMENTS

Sections

74.48.005 Purpose—Findings—Intent.

[2011 RCW Supp—page 1504]

74.48.010	Definitions.
74.48.020	Skilled nursing facility safety net trust fund.
74.48.030	Assessments.
74.48.040	Administration and collection.
74.48.050	Exceptions.
74.48.060	Conditions.
74.48.070	Assessment part of operating overhead.
74.48.080	Enforcement.
74.48.090	Quality incentive payments.
74.48.900	Severability—2011 1st sp.s. c 7.
74.48.901	Effective date—2011 1st sp.s. c 7.

74.48.005 Purpose—Findings—Intent. (1) It is the intent of the legislature to encourage maximization of financial resources eligible and available for medicaid services by establishing the skilled nursing facility safety net trust fund to receive skilled nursing facility safety net assessments to use in securing federal matching funds under federally prescribed programs available through the state medicaid plan.

(2) The purpose of this chapter is to provide for a safety net assessment on certain Washington skilled nursing facilities, which will be used solely to support payments to skilled nursing facilities for medicaid services.

(3) The legislature finds that:

(a) Washington skilled nursing facilities have proposed a skilled nursing facility safety net assessment to generate additional state and federal funding for the medicaid program, which will be used in part to restore recent reductions in skilled nursing facility reimbursement rates and provide for an increase in medicaid reimbursement rates; and

(b) The skilled nursing facility safety net assessment and skilled nursing facility safety net trust fund created in this chapter allows the state to generate additional federal financial participation for the medicaid program and provides for increased reimbursement to skilled nursing facilities.

(4) In adopting this chapter, it is the intent of the legislature:

(a) To impose a skilled nursing facility safety net assessment to be used solely for the purposes specified in this chapter;

(b) That funds generated by the assessment, including matching federal financial participation, shall not be used for purposes other than as specified in this chapter;

(c) That the total amount assessed not exceed the amount needed, in combination with all other available funds, to support the reimbursement rates and other payments authorized by this chapter, including payments under RCW 74.48.030; and

(d) To condition the assessment and use of the resulting funds on receiving federal approval for receipt of additional federal financial participation. [2011 1st sp.s. c 7 § 12.]

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

(1) "Certain high volume medicaid nursing facilities" means the fewest number of facilities necessary with the highest number of medicaid days or total patient days annually to meet the statistical redistribution test at 42 C.F.R. Sec. 433.68(e)(2).

(2) "Continuing care retirement community" means a facility that provides a continuum of services by one operational entity or related organization providing independent living services, or boarding home or assisted living services

under chapter 18.20 RCW, and skilled nursing services under chapter 18.51 RCW in a single contiguous campus. The number of licensed nursing home beds must be sixty percent or less of the total number of beds available in the entire continuing care retirement community. For purposes of this subsection "contiguous" means land adjoining or touching other property held by the same or related organization including land divided by a public road.

(3) "Deductions from revenue" means reductions from gross revenue resulting from an inability to collect payment of charges. Such reductions include bad debt, contractual adjustments, policy discounts and adjustments, and other such revenue deductions.

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

(5) "Fund" means the skilled nursing facility safety net trust fund.

(6) "Hospital based" means a nursing facility that is physically part of, or contiguous to, a hospital. For purposes of this subsection "contiguous" has the same meaning as in subsection (2) of this section.

(7) "Medicare patient day" means a patient day for medicare beneficiaries on a medicare part A stay, medicare hospice stay, and a patient day for persons who have opted for managed care coverage using their medicare benefit.

(8) "Medicare upper payment limit" means the limitation established by federal regulations, 42 C.F.R. Sec. 447.272, that disallows federal matching funds when state medicaid agencies pay certain classes of nursing facilities an aggregate amount for services that would exceed the amount that would be paid for the same services furnished by that class of nursing facilities under medicare payment principles.

(9) "Net resident service revenue" means gross revenue from services to nursing facility residents less deductions from revenue. Net resident service revenue does not include other operating revenue or nonoperating revenue.

(10) "Nonexempt nursing facility" means a nursing facility that is not exempt from the skilled nursing facility safety net assessment.

(11) "Nonoperating revenue" means income from activities not relating directly to the day-to-day operations of an organization. Nonoperating revenue includes such items as gains on disposal of a facility's assets, dividends, and interest from security investments, gifts, grants, and endowments.

(12) "Nursing facility," "facility," or "skilled nursing facility" has the same meaning as "nursing home" as defined in RCW 18.51.010.

(13) "Other operating revenue" means income from non-resident care services to residents, as well as sales and activities to persons other than residents. It is derived in the course of operating the facility such as providing personal laundry service for residents or from other sources such as meals provided to persons other than residents, personal telephones, gift shops, and vending machines.

(14) "Related organization" means an entity which is under common ownership and/or control with, or has control of, or is controlled by, the contractor, as defined under chapter 74.46 RCW.

(a) "Common ownership" exists when an entity is the beneficial owner of five percent or more ownership interest in

the contractor, as defined under chapter 74.46 RCW and any other entity.

(b) "Control" exists where an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable or exercised.

(15) "Resident day" means a calendar day of care provided to a nursing facility resident, excluding medicare patient days. Resident days include the day of admission and exclude the day of discharge. An admission and discharge on the same day count as one day of care. Resident days include nursing facility hospice days and exclude bedhold days for all residents. [2011 1st sp.s. c 7 § 13.]

74.48.020 Skilled nursing facility safety net trust fund. (1) There is established in the state treasury the skilled nursing facility safety net trust fund. The purpose and use of the fund shall be to receive and disburse funds, together with accrued interest, in accordance with this chapter. Moneys in the fund, including interest earned, shall not be used or disbursed for any purposes other than those specified in this chapter. Any amounts expended from the fund that are later recouped by the department on audit or otherwise shall be returned to the fund.

(2) The skilled nursing facility safety net trust fund must be a separate and continuing fund, and no money in the fund reverts to the state general fund at any time. All assessments, interest, and penalties collected by the department under RCW 74.48.030, 74.48.040, and 74.48.080 shall be deposited into the fund.

(3) Any money received under RCW 74.48.030, 74.48.040, and 74.48.080 must be deposited in the state treasury for credit to the skilled nursing facility safety net trust fund, and must be expended, to the extent authorized by federal law, to obtain federal financial participation in the medicaid program and to maintain and enhance nursing facility rates in a manner set forth in subsection (4) of this section.

(4) Disbursements from the fund may be made only as follows:

(a) As an immediate pass-through or rate add-on to reimburse the medicaid share of the skilled nursing facility safety net assessment as a medicaid allowable cost;

(b) To make medicaid payments for nursing facility services in accordance with chapter 74.46 RCW and pursuant to this chapter;

(c) To refund erroneous or excessive payments made by skilled nursing facilities pursuant to this chapter;

(d) To administer the provisions of this chapter the department may expend an amount not to exceed one-half of one percent of the money received from the assessment, and must not exceed the amount authorized for expenditure by the legislature for administrative expenses in a fiscal year;

(e) To repay the federal government for any excess payments made to skilled nursing facilities from the fund if the assessments or payment increases set forth in this chapter are deemed out of compliance with federal statutes and regulations and all appeals have been exhausted. In such a case, the department may require skilled nursing facilities receiving excess payments to refund the payments in question to the fund. The state in turn shall return funds to the federal gov-

ernment in the same proportion as the original financing. If a skilled nursing facility is unable to refund payments, the state shall either develop a payment plan or deduct moneys from future medicaid payments, or both; and

(f) To increase nursing facility payments to fund covered services to medicaid beneficiaries within medicare upper limits.

(5) Any positive balance in the fund at the end of a fiscal year shall be applied to reduce the assessment amount for the subsequent fiscal year in accordance with RCW 74.48.040(1)(c)(i).

(6) Upon termination of the assessment, any amounts remaining in the fund shall be refunded to skilled nursing facilities, pro rata according to the amount paid by the facility, subject to limitations of federal law. [2011 1st sp.s. c 7 § 14.]

74.48.030 Assessments. (1) In accordance with the redistribution method set forth in 42 C.F.R. Sec. 433.68(e)(1) and (2), the department shall seek a waiver of the broad-based and uniform provider assessment requirements of federal law to exclude certain nursing facilities from the skilled nursing facility safety net assessment and to permit certain high volume medicaid nursing facilities or facilities with a high number of total annual resident days to pay the skilled nursing facility safety net assessment at a lesser amount per nonmedicare patient day.

(2) The skilled nursing facility safety net assessment shall, at no time, be greater than the maximum percentage of the nursing facility industry reported net patient service revenues allowed under federal law or regulation.

(3) All skilled nursing facility safety net assessments collected pursuant to this section by the department shall be transmitted to the state treasurer who shall credit all such amounts to the skilled nursing facility safety net trust fund. [2011 1st sp.s. c 7 § 15.]

74.48.040 Administration and collection. (1) The department, in cooperation with the office of financial management, shall develop rules for determining the amount to be assessed to individual skilled nursing facilities, notifying individual skilled nursing facilities of the assessed amount, and collecting the amounts due. Such rule making shall specifically include provision for:

(a) Payment of the skilled nursing facility safety net assessment;

(b) Interest on delinquent assessments;

(c) Adjustment of the assessment amounts as follows:

(i) The assessment amounts under RCW 74.48.030 may be adjusted as follows:

(A) If sufficient other appropriated funds for skilled nursing facilities, are available to support the nursing facility reimbursement rates as authorized in the biennial appropriations act and other uses and payments permitted by RCW 74.48.020 and 74.48.030 without utilizing the full assessment authorized under RCW 74.48.030, the department shall reduce the amount of the assessment to the minimum level necessary to support those reimbursement rates and other uses and payments.

(B) So long as none of the conditions set forth in RCW 74.48.060(2) have occurred, if the department's forecasts indicate that the assessment amounts under RCW 74.48.030, together with all other appropriated funds, are not sufficient to support the skilled nursing facility reimbursement rates authorized in the biennial appropriations act and other uses and payments authorized under RCW 74.48.020 and 74.48.030, the department shall increase the assessment rates to the amount necessary to support those reimbursement rates and other payments to the maximum amount allowable under federal law.

(C) Any positive balance remaining in the fund at the end of the fiscal year shall be applied to reduce the assessment amount for the subsequent fiscal year.

(ii) Beginning July 1, 2012, any adjustment to the assessment amounts pursuant to this subsection, and the data supporting such adjustment, including but not limited to relevant data listed in subsection (2) of this section, must be submitted to the Washington health care association, and aging services of Washington, for review and comment at least sixty calendar days prior to implementation of such adjusted assessment amounts. Any review and comment provided by the Washington health care association, and aging services of Washington, shall not limit the ability of either association or its members to challenge an adjustment or other action by the department that is not made in accordance with this chapter.

(2) By November 30th of each year, the department shall provide the following data to the office of financial management, the chair of the fiscal committee of the senate and the house of representatives, the Washington health care association, and aging services of Washington:

(a) The fund balance; and

(b) The amount of assessment paid by each skilled nursing facility.

(3) Assessments shall be assessed from July 1, 2011. [2011 1st sp.s. c 7 § 16.]

74.48.050 Exceptions. (1) Subject to subsection (4) of this section the department shall exempt the following nursing facility providers from the skilled nursing facility safety net assessment subject to federal approval under 42 C.F.R. Sec. 433.68(e)(2):

(a) Continuing care retirement communities;

(b) Nursing facilities with thirty-five or fewer licensed beds;

(c) State, tribal, and county operated nursing facilities; and

(d) Any nursing facility operated by a public hospital district and nursing facilities that are hospital-based.

(2) The department shall lower the skilled nursing facility safety net assessment for either certain high volume medicaid nursing facilities or certain facilities with high resident volumes to meet the redistributive tests of 42 C.F.R. Sec. 433.68(e)(2).

(3) The department shall lower the skilled nursing facility safety net assessment for any skilled nursing facility with a licensed bed capacity in excess of two hundred three beds to the same level described in subsection (2) of this section.

(4) To the extent necessary to obtain federal approval under 42 C.F.R. Sec. 433.68(e)(2), the exemptions prescribed

in subsections (1), (2), and (3) of this section may be amended by the department.

(5) The per resident day assessment rate shall be the same amount for each affected facility except as prescribed in subsections (1), (2), and (3) of this section.

(6) The department shall notify the nursing facility operators of any skilled nursing facilities that would be exempted from the skilled nursing facility safety net assessment pursuant to the waiver request submitted to the United States department of health and human services under this section. [2011 1st sp.s. c 7 § 17.]

74.48.060 Conditions. (1) If the centers for medicare and medicaid services fail to approve any state plan amendments or waiver requests that are necessary in order to implement the applicable sections of this chapter then the assessment authorized in RCW 74.48.040 shall cease to be imposed.

(2) Nothing in subsection (1) of this section prohibits the department from working cooperatively with the centers for medicare and medicaid services to secure approval of any needed state plan amendments or waiver requests. As provided in RCW 74.48.030 and 74.48.050, the department shall adjust any submitted state plan amendments or waiver requests as necessary to achieve approval.

(3) If this chapter does not take effect or ceases to be imposed, any moneys remaining in the fund shall be refunded to skilled nursing facilities in proportion to the amounts paid by such facilities. [2011 1st sp.s. c 7 § 18.]

74.48.070 Assessment part of operating overhead. The incidence and burden of assessments imposed under this chapter shall be on skilled nursing facilities and the expense associated with the assessments shall constitute a part of the operating overhead of the facilities. Skilled nursing facilities shall not itemize the safety net assessment on billings to residents or third-party payers. [2011 1st sp.s. c 7 § 19.]

74.48.080 Enforcement. If a nursing facility fails to make timely payment of the safety net assessment, the department may seek a remedy provided by law, including, but not limited to:

(1) Withholding any medical assistance reimbursement payments until such time as the assessment amount is recovered;

(2) Suspension or revocation of the nursing facility license; or

(3) Imposition of a civil fine up to one thousand dollars per day for each delinquent payment, not to exceed the amount of the assessment. [2011 1st sp.s. c 7 § 20.]

74.48.090 Quality incentive payments. (1) The department and the department of health, in consultation with the Washington state health care association, and aging services of Washington, shall design a system of skilled nursing facility quality incentive payments. The design of the system shall be submitted to the relevant policy and fiscal committees of the legislature by December 15, 2011. The system shall be based upon the following principles:

(a) Evidence-based treatment and processes shall be used to improve health care outcomes for skilled nursing facility residents;

(b) Effective purchasing strategies to improve the quality of health care services should involve the use of common quality improvement measures, while recognizing that some measures may not be appropriate for application to facilities with high bariatric, behaviorally challenged, or rehabilitation populations;

(c) Quality measures chosen for the system should be consistent with the standards that have been developed by national quality improvement organizations, such as the national quality forum, the federal centers for medicare and medicaid services, or the federal agency for healthcare research and quality. New reporting burdens to skilled nursing facilities should be minimized by giving priority to measures skilled nursing facilities that are currently required to report to governmental agencies, such as the nursing home compare measures collected by the federal centers for medicare and medicaid services;

(d) Benchmarks for each quality improvement measure should be set at levels that are feasible for skilled nursing facilities to achieve, yet represent real improvements in quality and performance for a majority of skilled nursing facilities in Washington state; and

(e) Skilled nursing facilities performance and incentive payments should be designed in a manner such that all facilities in Washington are able to receive the incentive payments if performance is at or above the benchmark score set in the system established under this section.

(2) Pursuant to an appropriation by the legislature, for state fiscal year 2013 and each fiscal year thereafter, assessments may be increased to support an additional one percent increase in skilled nursing facility reimbursement rates for facilities that meet the quality incentive benchmarks established under this section. [2011 1st sp.s. c 7 § 21.]

74.48.900 Severability—2011 1st sp.s. c 7. Except as provided in RCW 74.48.060, if any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2011 1st sp.s. c 7 § 24.]

74.48.901 Effective date—2011 1st sp.s. c 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011. [2011 1st sp.s. c 7 § 26.]

Chapter 74.50 RCW

ALCOHOLISM AND DRUG ADDICTION TREATMENT AND SUPPORT

Sections

- 74.50.055 Treatment services—Eligibility.
74.50.060 Shelter assistance program.

74.50.055 Treatment services—Eligibility. (1) A person shall not be eligible for treatment services under this chapter unless he or she:

(a) Meets the income and resource eligibility requirements for the medical care services program under RCW 74.09.035(1)(a)(iv) and (v); and

(b) Is incapacitated from gainful employment, which incapacity will likely continue for a minimum of sixty days.

(2) First priority for receipt of treatment services shall be given to pregnant women and parents of young children.

(3) In order to rationally allocate treatment services, the department may establish by rule caseload ceilings and additional eligibility criteria, including the setting of priorities among classes of persons for the receipt of treatment services. Any such rules shall be consistent with any conditions or limitations contained in any appropriations for treatment services. [2011 1st sp.s. c 36 § 10; 1989 1st ex.s. c 18 § 4.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Additional notes found at www.leg.wa.gov

74.50.060 Shelter assistance program. The department shall establish a shelter assistance program to provide, within available funds, shelter for persons eligible under this chapter. "Shelter," "shelter support," or "shelter assistance" means a facility under contract to the department providing room and board in a supervised living arrangement, normally in a group or dormitory setting, to eligible recipients under this chapter. This may include supervised domiciliary facilities operated under the auspices of public or private agencies. No facility under contract to the department shall allow the consumption of alcoholic beverages on the premises. The department may contract with counties and cities for such shelter services. To the extent possible, the department shall not displace existing emergency shelter beds for use as shelter under this chapter. In areas of the state in which it is not feasible to develop shelters, due to low numbers of people needing shelter services, or in which sufficient numbers of shelter beds are not available, the department may provide shelter through an intensive protective payee program, unless the department grants an exception on an individual basis for less intense supervision. [2011 1st sp.s. c 36 § 33; 2010 1st sp.s. c 8 § 31; 1989 1st ex.s. c 18 § 3; 1988 c 163 § 4; 1987 c 406 § 7.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Additional notes found at www.leg.wa.gov

Chapter 74.60 RCW

HOSPITAL SAFETY NET ASSESSMENT

Sections

74.60.020	Hospital safety net assessment fund. (<i>Expires July 1, 2013.</i>)
74.60.090	Increased hospital reimbursement rates. (<i>Expires July 1, 2013.</i>)

74.60.020 Hospital safety net assessment fund. (*Expires July 1, 2013.*) (1) A dedicated fund is hereby established within the state treasury to be known as the hospital safety net assessment fund. The purpose and use of the fund shall be to receive and disburse funds, together with accrued interest, in accordance with this chapter. Moneys in the fund, including interest earned, shall not be used or disbursed for any purposes other than those specified in this chapter. Any amounts expended from the fund that are later recouped by the department on audit or otherwise shall be returned to the fund.

(a) Any unexpended balance in the fund at the end of a fiscal biennium shall carry over into the following biennium and shall be applied to reduce the amount of the assessment under RCW 74.60.050(1)(c).

(b) Any amounts remaining in the fund on July 1, 2013, shall be used to make increased payments in accordance with RCW 74.60.090 and 74.60.120 for any outstanding claims with dates of service prior to July 1, 2013. Any amounts remaining in the fund after such increased payments are made shall be refunded to hospitals, pro rata according to the amount paid by the hospital, subject to the limitations of federal law.

(2) All assessments, interest, and penalties collected by the department under RCW 74.60.030 and 74.60.050 shall be deposited into the fund.

(3) Disbursements from the fund may be made only as follows:

(a) Subject to appropriations and the continued availability of other funds in an amount sufficient to maintain the level of medicaid hospital rates in effect on July 1, 2009;

(b) Upon certification by the secretary that the conditions set forth in RCW 74.60.150(1) have been met with respect to the assessments imposed under RCW 74.60.030 (1) and (2), the payments provided under RCW 74.60.080, payments provided under RCW 74.60.120(2), and any initial payments under RCW 74.60.100 and 74.60.110, funds shall be disbursed in the amount necessary to make the payments specified in those sections;

(c) Upon certification by the secretary that the conditions set forth in RCW 74.60.150(1) have been met with respect to the assessments imposed under RCW 74.60.030(3) and the payments provided under RCW 74.60.090 and 74.60.130, payments made subsequent to the initial payments under RCW 74.60.100 and 74.60.110, and payments under RCW 74.60.120(3), funds shall be disbursed periodically as necessary to make the payments as specified in those sections;

(d) To refund erroneous or excessive payments made by hospitals pursuant to this chapter;

(e) The sum of forty-nine million three hundred thousand dollars for the 2009-2011 fiscal biennium may be expended in lieu of state general fund payments to hospitals. An additional sum of seventeen million five hundred thousand dollars for the 2009-2011 fiscal biennium may be expended in lieu of state general fund payments to hospitals if additional federal financial participation under section 5001 of P.L. No. 111-5 is extended beyond December 31, 2010. The sum of one hundred ninety-nine million eight hundred thousand dollars for the 2011-2013 fiscal biennium may be expended in lieu of state general fund payments to hospitals;

(f) The sum of one million dollars per biennium may be disbursed for payment of administrative expenses incurred by the department in performing the activities authorized by this chapter;

(g) To repay the federal government for any excess payments made to hospitals from the fund if the assessments or payment increases set forth in this chapter are deemed out of compliance with federal statutes and regulations and all appeals have been exhausted. In such a case, the department may require hospitals receiving excess payments to refund the payments in question to the fund. The state in turn shall return funds to the federal government in the same proportion as the original financing. If a hospital is unable to refund payments, the state shall develop a payment plan and/or deduct moneys from future medicaid payments. [2011 1st sp.s. c 35 § 1; 2010 1st sp.s. c 30 § 3.]

Expiration date—2011 1st sp.s. c 35: "Sections 1 and 2 of this act expire July 1, 2013." [2011 1st sp.s. c 35 § 3.]

Effective date—2011 1st sp.s. c 35: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 35 § 4.]

74.60.090 Increased hospital reimbursement rates. (Expires July 1, 2013.) (1) Upon satisfaction of the applicable conditions set forth in RCW 74.60.150(1) and for services rendered on or after February 1, 2010, through June 30, 2011, the department shall increase the medicaid inpatient and outpatient fee-for-service hospital reimbursement rates in effect on June 30, 2009, by the percentages specified below:

- (a) Prospective payment system hospitals:
 - (i) Inpatient psychiatric services: Thirteen percent;
 - (ii) Inpatient services: Thirteen percent;
 - (iii) Outpatient services: Thirty-six and eighty-three one-hundredths percent.

(b) Harborview medical center and University of Washington medical center:

- (i) Inpatient psychiatric services: Three percent;
- (ii) Inpatient services: Three percent;
- (iii) Outpatient services: Twenty-one percent.
- (c) Rehabilitation hospitals:
 - (i) Inpatient services: Thirteen percent;
 - (ii) Outpatient services: Thirty-six and eighty-three one-hundredths percent.

- (d) Psychiatric hospitals:
 - (i) Inpatient psychiatric services: Thirteen percent;
 - (ii) Inpatient services: Thirteen percent.

(2) Upon satisfaction of the applicable conditions set forth in RCW 74.60.150(1) and for services rendered on or after July 1, 2011, the department shall increase the medicaid inpatient and outpatient fee-for-service hospital reimbursement rates in effect on June 30, 2009, by the percentages specified below:

- (a) Prospective payment system hospitals:
 - (i) Inpatient psychiatric services: Thirteen percent;
 - (ii) Inpatient services: Three and ninety-six one-hundredths percent;
 - (iii) Outpatient services: Twenty-seven and twenty-five one-hundredths percent.

(b) Harborview medical center and University of Washington medical center:

- (i) Inpatient psychiatric services: Three percent;
- (ii) Inpatient services: Three percent;
- (iii) Outpatient services: Twenty-one percent.
- (c) Rehabilitation hospitals:
 - (i) Inpatient services: Thirteen percent;
 - (ii) Outpatient services: Thirty-six and eighty-three one-hundredths percent.
- (d) Psychiatric hospitals:
 - (i) Inpatient psychiatric services: Thirteen percent;
 - (ii) Inpatient services: Thirteen percent.

(3) For claims processed for services rendered on or after February 1, 2010, but prior to satisfaction of the applicable conditions specified in RCW 74.60.150(1), the department shall, within sixty calendar days after satisfaction of those conditions, calculate the amount payable to hospitals in accordance with this section and remit the difference to each hospital that has submitted an otherwise allowable claim for payment for such services.

(4) By December 1, 2012, the department will submit a study to the legislature with recommendations on the amount of the assessments necessary to continue to support hospital payments for the 2013-2015 biennium. The evaluation will assess medicaid hospital payments relative to medicaid hospital costs. The study should address current federal law, including any changes on scope of medicaid coverage, provisions related to provider taxes, and impacts of federal health care reform legislation. The study should also address the state's economic forecast. Based on the forecast, the department should recommend the amount of assessment needed to support future hospital payments and the departmental administrative expenses. Recommendations should be developed with the fiscal committees of the legislature, office of financial management, and the Washington state hospital association. [2011 1st sp.s. c 35 § 2; 2010 1st sp.s. c 30 § 10.]

Expiration date—Effective date—2011 1st sp.s. c 35: See notes following RCW 74.60.020.

Chapter 74.62 RCW

AGED, BLIND, OR DISABLED ASSISTANCE PROGRAM—PREGNANT WOMEN ASSISTANCE PROGRAM—ESSENTIAL NEEDS AND HOUSING SUPPORT PROGRAM

Sections

74.62.005	Findings—Intent—2011 1st sp.s. c 36.
74.62.010	Definitions.
74.62.020	Termination of disability lifeline program.
74.62.030	Assistance programs—Eligibility criteria.

74.62.005 Findings—Intent—2011 1st sp.s. c 36. (1) The legislature finds that:

(a) Persons who have a long-term disability and apply for federal supplemental security income benefits should receive assistance while their application for federal benefits is pending, with repayment from the federal government of state-funded income assistance paid through the aged, blind, or disabled assistance program;

(b) Persons who are incapacitated from gainful employment for an extended period, but who may not meet the level of severity of a long-term disability, are at increased risk of homelessness; and

(c) Persons who are homeless and suffering from significant medical impairments, mental illness, or chemical dependency face substantial barriers to successful participation in, and completion of, needed medical or behavioral health treatment services. Stable housing increases the likelihood of compliance with and completion of treatment.

(2) Through chapter 36, Laws of 2011 1st sp. sess., the legislature intends to:

(a) Terminate all components of the disability lifeline program created in 2010 and codified in *RCW 74.04.005 and create new programs: (i) To provide financial grants through the aged, blind, and [or] disabled assistance program and the pregnant women assistance program; and (ii) to provide services through the essential needs and housing support program; and

(b) Increase opportunities to utilize limited public funding, combined with private charitable and volunteer efforts to serve persons who are recipients of the benefits provided by the new programs created under chapter 36, Laws of 2011 1st sp. sess. [2011 1st sp.s. c 36 § 1.]

***Reviser's note:** 2011 1st sp.s. c 36 § 8 deleted the definition of "disability lifeline program."

Effective date—2011 1st sp.s. c 36: "Except for sections 6 and 8 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 2011]." [2011 1st sp.s. c 36 § 38.]

74.62.010 Definitions. For the purposes of this chapter, unless the context indicates otherwise, the following definitions shall apply:

(1) "Aged, blind, and [or] disabled assistance program" means the program established under RCW 74.62.030.

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

(3) "Director" or "secretary" means the secretary of social and health services.

(4) "Essential needs and housing support program" means the program established under RCW 43.185C.220.

(5) "Essential needs support" means personal health and hygiene items, cleaning supplies, other necessary items and transportation passes or tokens provided through an essential needs support entity established under RCW 43.185C.220.

(6) "Housing support" means assistance provided by a designated housing support entity established under RCW 43.185C.220 to maintain existing housing when the client is at substantial risk of becoming homeless, to obtain housing, or to obtain heat, electricity, natural gas, sewer, garbage, and water services when the client is at substantial risk of losing these services.

(7) "Pregnant women assistance program" means the program established under RCW 74.62.030.

(8) In the construction of words and phrases used in this chapter, the singular number shall include the plural, the masculine gender shall include both the feminine and neuter genders, and the present tense shall include the past and future tenses, unless the context thereof shall clearly indicate to the contrary. [2011 1st sp.s. c 36 § 7.]

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

74.62.020 Termination of disability lifeline program.

Effective October 31, 2011, the disability lifeline program, as defined under chapter 74.04 RCW, is terminated and all benefits provided under that program shall expire and cease to exist. [2011 1st sp.s. c 36 § 2.]

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

74.62.030 Assistance programs—Eligibility criteria.

(1)(a) Effective November 1, 2011, the aged, blind, or disabled assistance program shall provide financial grants to persons in need who:

(i) Are not eligible to receive federal aid assistance, other than basic food benefits transferred electronically and medical assistance;

(ii) Meet the eligibility requirements of subsection (3) of this section; and

(iii) Are aged, blind, or disabled. For purposes of determining eligibility for assistance for the aged, blind, or disabled assistance program, the following definitions apply:

(A) "Aged" means age sixty-five or older.

(B) "Blind" means statutorily blind as defined for the purpose of determining eligibility for the federal supplemental security income program.

(C) "Disabled" means likely to meet the federal supplemental security income disability standard. In making this determination, the department should give full consideration to the cumulative impact of an applicant's multiple impairments, an applicant's age, and vocational and educational history.

In determining whether a person is disabled, the department may rely on the following:

(I) A previous disability determination by the social security administration or the disability determination service entity within the department; or

(II) A determination that an individual is eligible to receive optional categorically needy medicaid as a disabled person under the federal regulations at 42 C.F.R. Parts 435, Secs. 201(a)(3) and 210.

(b) The following persons are not eligible for the aged, blind, or disabled assistance program:

(i) Persons who are not able to engage in gainful employment due primarily to alcohol or drug addiction. These persons shall be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. This subsection may not be construed to prohibit the department from granting aged, blind, or disabled assistance benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the aged, blind, or disabled assistance program; or

(ii) Persons for whom there has been a final determination of ineligibility for federal supplemental security income benefits.

(c) Persons may receive aged, blind, or disabled assistance benefits pending application for federal supplemental security income benefits. The monetary value of any aged, blind, or disabled assistance benefit that is subsequently duplicated by the person's receipt of supplemental security

income for the same period shall be considered a debt due the state and shall by operation of law be subject to recovery through all available legal remedies.

(2) Effective November 1, 2011, the pregnant women assistance program shall provide financial grants to persons who:

(a) Are not eligible to receive federal aid assistance other than basic food benefits or medical assistance; and

(b) Are pregnant and in need, based upon the current income and resource standards of the federal temporary assistance for needy families program, but are ineligible for federal temporary assistance for needy families benefits for a reason other than failure to cooperate in program requirements; and

(c) Meet the eligibility requirements of subsection (3) of this section.

(3) To be eligible for the aged, blind, or disabled assistance program under subsection (1) of this section or the pregnant women assistance program under subsection (2) of this section, a person must:

(a) Be a citizen or alien lawfully admitted for permanent residence or otherwise residing in the United States under color of law;

(b) Have furnished the department his or her social security number. If the social security number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of benefits, and the social security number shall be provided to the department upon receipt;

(c) Have not refused or failed without good cause to participate in drug or alcohol treatment if an assessment by a certified chemical dependency counselor indicates a need for such treatment. Good cause must be found to exist when a person's physical or mental condition, as determined by the department, prevents the person from participating in drug or alcohol dependency treatment, when needed outpatient drug or alcohol treatment is not available to the person in the county of his or her residence or when needed inpatient treatment is not available in a location that is reasonably accessible for the person; and

(d) Not have refused or failed to cooperate in obtaining federal aid assistance, without good cause.

(4) Effective November 1, 2011, referrals for essential needs and housing support under RCW 43.185C.220 shall be provided to persons found eligible for medical care services under RCW 74.09.035 who are not recipients of alcohol and addiction services provided under chapter 74.50 RCW or are not recipients of aged, blind, or disabled assistance.

(5) No person may be considered an eligible individual for benefits under this section with respect to any month if during that month the person:

(a) Is fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or

(b) Is violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction.

(6) The department must review the cases of all persons, except recipients of alcohol and addiction treatment under chapter 74.50 RCW, or recipients of aged, blind, or disabled

assistance, who have received medical care services for twelve consecutive months, and at least annually after the first review, to determine whether they are eligible for the aged, blind, or disabled assistance program. [2011 1st sp.s. c 36 § 3.]

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Title 76

FORESTS AND FOREST PRODUCTS

Chapters

76.09 Forest practices.

76.13 Stewardship of nonindustrial forests and woodlands.

76.44 Institute of forest resources.

76.48 Specialized forest products.

Chapter 76.09 RCW

FOREST PRACTICES

Sections

76.09.050	Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver.
76.09.190	Additional penalty, gross misdemeanor.
76.09.240	Forest practices—County, city, or town to regulate—When—Adoption of development regulations—Enforcement—Technical assistance—Exceptions and limitations—Verification that land not subject to a notice of conversion to non-forestry uses—Reporting of information to the department of revenue.

76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver. (1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

Class II: Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. However, the work may not begin until all forest practice fees required under RCW 76.09.065 have been received by the department. Class II shall not include forest practices:

(a) On forest lands that are being converted to another use;

(b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.021;

(c) Within "shorelines of the state" as defined in RCW 90.58.030;

(d) Excluded from Class II by the board; or

(e) Including timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, which are Class IV;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department;

Class IV: Forest practices other than those contained in Class I or II:

(a) On forest lands that are being converted to another use;

(b) On lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development;

(c) That involve timber harvesting or road construction on forest lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application; and/or

(d) Which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, no Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended. However, in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, if a notification or application is delivered in person to the department by the operator or the operator's agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, the department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED, FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section. Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) For those forest practices regulated by the board and the department, if the county, city, or town believes that an application is inconsistent with this chapter, the forest prac-

tices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) For those forest practices regulated by the board and the department, the department shall not approve portions of applications to which a county, city, or town objects if:

(a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to forest lands that are being converted to another use.

The department shall either disapprove those portions of such application or appeal the county, city, or town objections to the appeals board. If the objections related to (b) of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county, city, or town objections has expired.

(8) For those forest practices regulated by the board and the department, in addition to any rights under the above paragraph, the county, city, or town may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.205. In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

(10) For those forest practices regulated by the board and the department, the department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) For those forest practices regulated by the board and the department, a county, city, or town may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department.

(12) Notwithstanding subsections (2) through (5) of this section, forest practices applications or notifications are not required for exotic insect and disease control operations conducted in accordance with RCW 76.09.060(8) where eradication can reasonably be expected. [2011 c 207 § 1; 2010 c 210 § 20; 2005 c 146 § 1003; 2003 c 314 § 4; 2002 c 121 § 1; 1997 c 173 § 2; 1994 c 264 § 49; 1993 c 443 § 3; 1990 1st ex.s. c 17 § 61; 1988 c 36 § 47; 1987 c 95 § 9; 1975 1st ex.s. c 200 § 2; 1974 ex.s. c 137 § 5.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Findings—2003 c 314: See note following RCW 17.24.220.

Additional notes found at www.leg.wa.gov

76.09.190 Additional penalty, gross misdemeanor. In addition to the penalties imposed pursuant to RCW 76.09.170, any person who conducts any forest practice or knowingly aids or abets another in conducting any forest practice in violation of any provisions of RCW 76.09.010 through 76.09.280 or 90.48.420, or of the regulations implementing RCW 76.09.010 through 76.09.280 or 90.48.420, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for up to three hundred sixty-four days or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation. [2011 c 96 § 55; 1974 ex.s. c 137 § 19.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

76.09.240 Forest practices—County, city, or town to regulate—When—Adoption of development regulations—Enforcement—Technical assistance—Exceptions and limitations—Verification that land not subject to a notice of conversion to nonforestry uses—Reporting of information to the department of revenue. (1)(a) Counties planning under RCW 36.70A.040 with a population greater than one hundred thousand, and the cities and towns within those counties, where more than a total of twenty-five Class IV forest practices applications, as defined in RCW 76.09.050(1) Class IV (a) through (d), have been filed with the department between January 1, 2003, and December 31, 2005, shall adopt and enforce ordinances or regulations as provided in subsection (2) of this section for the following:

(i) Forest practices classified as Class I, II, III, and IV that are within urban growth areas designated under RCW 36.70A.110, except for forest practices on ownerships of contiguous forest land equal to or greater than twenty acres where the forest landowner provides, to the department and the county, city, or town, a written statement of intent, signed by the forest landowner, not to convert to a use other than growing commercial timber for ten years. This statement must be accompanied by either:

(A) A written forest management plan acceptable to the department; or

(B) Documentation that the land is enrolled as forest land of long-term commercial significance under the provisions of chapter 84.33 RCW; and

(ii) Forest practices classified as Class IV, outside urban growth areas designated under RCW 36.70A.110, involving either timber harvest or road construction, or both on:

(A) Forest lands that are being converted to another use; or

(B) Lands which, under RCW 76.09.070, are not to be reforested because of the likelihood of future conversion to urban development;

(b) Counties planning under RCW 36.70A.040, and the cities and towns within those counties, not included in (a) of

this subsection, may adopt and enforce ordinances or regulations as provided in (a) of this subsection; and

(c) Counties not planning under RCW 36.70A.040, and the cities and towns within those counties, may adopt and enforce ordinances or regulations as provided in subsection (2) of this section for forest practices classified as Class IV involving either timber harvest or road construction, or both on:

- (i) Forest lands that are being converted to another use; or
- (ii) Lands which, under RCW 76.09.070, are not to be reforested because of the likelihood of future conversion to urban development.

(2) Before a county, city, or town may regulate forest practices under subsection (1) of this section, it shall ensure that its critical areas and development regulations are in compliance with RCW 36.70A.130 and, if applicable, RCW 36.70A.215. The county, city, or town shall notify the department and the department of ecology in writing sixty days prior to adoption of the development regulations required in this section. The transfer of jurisdiction shall not occur until the county, city, or town has notified the department, the department of revenue, and the department of ecology in writing of the effective date of the regulations. Ordinances and regulations adopted under subsection (1) of this section and this subsection must be consistent with or supplement development regulations that protect critical areas pursuant to RCW 36.70A.060, and shall at a minimum include:

(a) Provisions that require appropriate approvals for all phases of the conversion of forest lands, including land clearing and grading; and

(b) Procedures for the collection and administration of permit and recording fees.

(3) Activities regulated by counties, cities, or towns as provided in subsections (1) and (2) of this section shall be administered and enforced by those counties, cities, or towns. The department shall not regulate these activities under this chapter.

(4) The board shall continue to adopt rules and the department shall continue to administer and enforce those rules in each county, city, or town for all forest practices as provided in this chapter until such a time as the county, city, or town has updated its development regulations as required by RCW 36.70A.130 and, if applicable, RCW 36.70A.215, and has adopted ordinances or regulations under subsections (1) and (2) of this section. However, counties, cities, and towns that have adopted ordinances or regulations regarding forest practices prior to July 22, 2011, are not required to readopt their ordinances or regulations in order to satisfy the requirements of this section except as necessary to ensure consistency with Class IV forest practices as defined in RCW 76.09.050.

(5) Upon request, the department shall provide technical assistance to all counties, cities, and towns while they are in the process of adopting the regulations required by this section, and after the regulations become effective.

(6) For those forest practices over which the board and the department maintain regulatory authority no county, city, municipality, or other local or regional governmental entity shall adopt or enforce any law, ordinance, or regulation per-

taining to forest practices, except that to the extent otherwise permitted by law, such entities may exercise any:

(a) Land use planning or zoning authority: PROVIDED, That exercise of such authority may regulate forest practices only where the application submitted under RCW 76.09.060 as now or hereafter amended indicates that the lands are being converted to a use other than commercial forest product production: PROVIDED, That no permit system solely for forest practices shall be allowed; that any additional or more stringent regulations shall not be inconsistent with the forest practices regulations enacted under this chapter; and such local regulations shall not unreasonably prevent timber harvesting;

(b) Taxing powers;

(c) Regulatory authority with respect to public health; and

(d) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971."

(7) All counties and cities adopting or enforcing regulations or ordinances under this section shall include in the regulation or ordinance a requirement that a verification accompany every permit issued for forest land by that county or city associated with the conversion to a use other than commercial timber operation, as that term is defined in RCW 76.09.020, that verifies that the land in question is not or has not been subject to a notice of conversion to nonforestry uses under RCW 76.09.060 during the six-year period prior to the submission of a permit application.

(8) To improve the administration of the forest excise tax created in chapter 84.33 RCW, a county, city, or town that regulates forest practices under this section shall report permit information to the department of revenue for all approved forest practices permits. The permit information shall be reported to the department of revenue no later than sixty days after the date the permit was approved and shall be in a form and manner agreed to by the county, city, or town and the department of revenue. Permit information includes the landowner's legal name, address, telephone number, and parcel number. [2011 c 207 § 2; 2010 c 219 § 1. Prior: 2007 c 236 § 1; 2007 c 106 § 6; 2002 c 121 § 2; 1997 c 173 § 5; 1975 1st ex.s. c 200 § 11; 1974 ex.s. c 137 § 24.]

Chapter 76.13 RCW

STEWARDSHIP OF NONINDUSTRIAL FORESTS AND WOODLANDS

Sections

76.13.120	Findings—Definitions—Forestry riparian easement program.
76.13.140	Small forest landowners—Value of buffer trees.
76.13.160	Qualifying small forest landowner—Review of certain records.
76.13.170	List of forest riparian easements to be funded.
76.13.180	Sale of land to nonqualifying landowner—Selling landowner must reimburse the state.

76.13.120 Findings—Definitions—Forestry riparian easement program. (1) The legislature finds that the state should acquire easements primarily along riparian and other sensitive aquatic areas from qualifying small forest landowners willing to sell or donate such easements to the state provided that the state will not be required to acquire such easements if they are subject to unacceptable liabilities. The leg-

islature therefore establishes a forestry riparian easement program.

(2) The definitions in this subsection apply throughout this section and RCW 76.13.100, 76.13.110, 76.13.140, and 76.13.160 unless the context clearly requires otherwise.

(a) "Forestry riparian easement" means an easement covering qualifying timber granted voluntarily to the state by a qualifying small forest landowner.

(b) "Qualifying small forest landowner" means a landowner meeting all of the following characteristics as of the date the department offers compensation for a forestry riparian easement:

(i) Is a small forest landowner as defined in (d) of this subsection; and

(ii) Is an individual, partnership, corporation, or other nongovernmental for-profit legal entity.

(c) "Qualifying timber" means those forest trees for which the small forest landowner is willing to grant the state a forestry riparian easement and must meet all of the following:

(i) The forest trees are covered by a forest practices application that the small forest landowner is required to leave unharvested under the rules adopted under RCW 76.09.055 and 76.09.370 or that is made uneconomic to harvest by those rules;

(ii) The forest trees are within or bordering a commercially reasonable harvest unit as determined under rules adopted by the forest practices board, or for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules;

(iii) The forest trees are located within, or affected by forest practices rules pertaining to any one, or all, of the following:

(A) Riparian or other sensitive aquatic areas;

(B) Channel migration zones; or

(C) Areas of potentially unstable slopes or landforms, verified by the department, and must meet all of the following:

(I) Are addressed in a forest practices application;

(II) Are adjacent to a commercially reasonable harvest area; and

(III) Have the potential to deliver sediment or debris to a public resource or threaten public safety.

(d) "Small forest landowner" means a landowner meeting all of the following characteristics:

(i) A forest landowner as defined in RCW 76.09.020 whose interest in the land and timber is in fee or who has rights to the timber to be included in the forestry riparian easement that extend at least fifty years from the date the completed forestry riparian easement application associated with the easement is submitted;

(ii) An entity that has harvested from its own lands in this state during the three years prior to the year of application an average timber volume that would qualify the owner as a small harvester under RCW 84.33.035; and

(iii) An entity that certifies at the time of application that it does not expect to harvest from its own lands more than the volume allowed by RCW 84.33.035 during the ten years following application. If a landowner's prior three-year average harvest exceeds the limit of RCW 84.33.035, or the land-

owner expects to exceed this limit during the ten years following application, and that landowner establishes to the department's reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses, the landowner shall be deemed to be a small forest landowner. For purposes of determining whether a person qualifies as a small forest landowner, the small forest landowner office, created in RCW 76.13.110, shall evaluate the landowner under this definition, pursuant to RCW 76.13.160, as of the date that the forest practices application is submitted and the date that the department offers compensation for the forestry riparian easement. A small forest landowner can include an individual, partnership, corporation, or other nongovernmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section. If a landowner is unable to obtain an approved forest practices application for timber harvest for any of his or her land because of restrictions under the forest practices rules, the landowner may still qualify as a small forest landowner under this section.

(e) "Completion of harvest" means that the trees have been harvested from an area and that further entry into that area by mechanized logging or slash treating equipment is not expected.

(3) The department is authorized and directed to accept and hold in the name of the state of Washington forestry riparian easements granted by qualifying small forest landowners covering qualifying timber and to pay compensation to such landowners in accordance with this section. The department may not transfer the easements to any entity other than another state agency.

(4) Forestry riparian easements shall be effective for fifty years from the date of the completed forestry riparian easement application, unless the easement is voluntarily terminated earlier by the department, based on a determination that termination is in the best interest of the state, or under the terms of a termination clause in the easement.

(5) Forestry riparian easements shall be restrictive only, and shall preserve all lawful uses of the easement premises by the landowner that are consistent with the terms of the easement and the requirement to protect riparian functions during the term of the easement, subject to the restriction that the leave trees required by the rules to be left on the easement premises may not be cut during the term of the easement. No right of public access to or across, or any public use of the easement premises is created by this statute or by the easement. Forestry riparian easements shall not be deemed to trigger the compensating tax of or otherwise disqualify land from being taxed under chapter 84.33 or 84.34 RCW.

(6) The small forest landowner office shall determine what constitutes a completed application for a forestry riparian easement. Such an application shall, at a minimum, include documentation of the owner's status as a qualifying small forest landowner, identification of location and the types of qualifying timber, and notification of completion of harvest, if applicable.

(7) Upon receipt of the qualifying small forest landowner's forestry riparian easement application, and subject to

the availability of amounts appropriated for this specific purpose, the following must occur:

(a) The small forest landowner office shall determine the compensation to be offered to the qualifying small forest landowner for qualifying timber after the department accepts the completed forestry riparian easement application and the landowner has completed marking the boundary of the area containing the qualifying timber. The legislature recognizes that there is not readily available market transaction evidence of value for easements of the nature required by this section, and thus establishes the methodology provided in this subsection to ascertain the value for forestry riparian easements. Values so determined may not be considered competent evidence of value for any other purpose.

(b) The small forest landowner office, subject to the availability of amounts appropriated for this specific purpose, is responsible for assessing the volume of qualifying timber. However, no more than fifty percent of the total amounts appropriated for the forestry riparian easement program may be applied to determine the volume of qualifying timber for completed forestry riparian easement applications. Based on the volume established by the small forest landowner office and using data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091, the small forest landowner office shall attempt to determine the fair market value of the qualifying timber as of the date the complete forestry riparian easement application is received. Removal of any qualifying timber before the expiration of the easement must be in accordance with the forest practices rules and the terms of the easement. There shall be no reduction in compensation for reentry.

(8)(a) Except as provided in subsection (9) of this section and subject to the availability of amounts appropriated for this specific purpose, the small forest landowner office shall offer compensation for qualifying timber to the qualifying small forest landowner in the amount of fifty percent of the value determined by the small forest landowner office, plus the compliance and reimbursement costs as determined in accordance with RCW 76.13.140. However, compensation for any qualifying small forest landowner for qualifying timber located on potentially unstable slopes or landforms may not exceed a total of fifty thousand dollars during any biennial funding period.

(b) If the landowner accepts the offer for qualifying timber, the department shall pay the compensation promptly upon:

(i) Completion of harvest in the area within a commercially reasonable harvest unit with which the forestry riparian easement is associated under an approved forest practices application, unless an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules;

(ii) Verification that the landowner has no outstanding violations under chapter 76.09 RCW or any associated rules; and

(iii) Execution and delivery of the easement to the department.

(c) Upon donation or payment of compensation, the department may record the easement.

(9) For approved forest practices applications for which the regulatory impact is greater than the average percentage

impact for all small forest landowners as determined by an analysis by the department under the regulatory fairness act, chapter 19.85 RCW, the compensation offered will be increased to one hundred percent for that portion of the regulatory impact that is in excess of the average. Regulatory impact includes all trees identified as qualifying timber. A separate average or high impact regulatory threshold shall be established for western and eastern Washington. Criteria for these measurements and payments shall be established by the small forest landowner office.

(10) The forest practices board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, to implement the forestry riparian easement program, including the following:

(a) A standard version of a forestry riparian easement application as well as all additional documents necessary or advisable to create the forestry riparian easements as provided for in this section;

(b) Standards for descriptions of the easement premises with a degree of precision that is reasonable in relation to the values involved;

(c) Methods and standards for cruises and valuation of forestry riparian easements for purposes of establishing the compensation. The department shall perform the timber cruises of forestry riparian easements required under this chapter and chapter 76.09 RCW. Timber cruises are subject to amounts appropriated for this purpose. However, no more than fifty percent of the total appropriated funding for the forestry riparian easement program may be applied to determine the volume of qualifying timber for completed forestry riparian easement applications. Any rules concerning the methods and standards for valuations of forestry riparian easements shall apply only to the department, qualifying small forest landowners, and the small forest landowner office;

(d) A method to determine that a forest practices application involves a commercially reasonable harvest, and adopt criteria for entering into a forestry riparian easement where a commercially reasonable harvest is not possible or a forest practices application that has been submitted cannot be approved because of restrictions under the forest practices rules;

(e) A method to address blowdown of qualified timber falling outside the easement premises;

(f) A formula for sharing of proceeds in relation to the acquisition of qualified timber covered by an easement through the exercise or threats of eminent domain by a federal or state agency with eminent domain authority, based on the present value of the department's and the landowner's relative interests in the qualified timber;

(g) High impact regulatory thresholds;

(h) A method to determine timber that is qualifying timber because it is rendered uneconomic to harvest by the rules adopted under RCW 76.09.055 and 76.09.370;

(i) A method for internal department review of small forest landowner office compensation decisions under this section; and

(j) Consistent with RCW 76.13.180, a method to collect reimbursement from landowners who received compensation for a forestry riparian easement and who, within the first ten years after receipt of compensation for a forestry riparian easement, sells the land on which an easement is located to a

nonqualifying landowner. [2011 c 218 § 1; 2004 c 102 § 1; 2002 c 120 § 2; 2001 c 280 § 2; 2000 c 11 § 13; 1999 sp.s. c 4 § 504.]

Additional notes found at www.leg.wa.gov

76.13.140 Small forest landowners—Value of buffer trees. In order to assist small forest landowners to remain economically viable, the legislature intends that the qualifying small forest landowners be able to net fifty percent of the value of the trees left in the buffer areas. The amount of compensation offered in RCW 76.13.120 shall also include the compliance costs for participation in the forestry riparian easement program, including the cost of preparing and recording the forestry riparian easement, and any business and occupation tax and real estate excise tax imposed because of entering into the forestry riparian easement. The small forest landowner office may contract with private consultants that the office finds qualified to perform timber cruises of forestry riparian easements or to lay out streamside buffers and comply with other forest practices regulatory requirements related to the forestry riparian easement program. The department shall reimburse qualifying small forest landowners for the actual costs incurred for laying out the streamside buffers and marking the qualifying timber once a contract has been executed for the forestry riparian easement program. Reimbursement is subject to the work being acceptable to the department. The small forest landowner office shall determine how the reimbursement costs will be calculated. [2011 c 218 § 2; 2002 c 120 § 3; 2001 c 280 § 3.]

76.13.160 Qualifying small forest landowner—Review of certain records. When establishing a forestry riparian easement program applicant's status as a qualifying small forest landowner pursuant to RCW 76.13.120, the department shall not review the applicant's timber harvest records, or any other tax-related documents, on file with the department of revenue. The department of revenue may confirm or deny an applicant's status as a small forest landowner at the request of the department. However, for the purposes of this section, the department of revenue may not disclose more information than whether or not the applicant has reported a harvest or harvests totaling greater than or less than the qualifying thresholds established in RCW 76.13.120. Nothing in this section, or RCW 84.33.280, prohibits the department from reviewing aggregate or general information provided by the department of revenue. [2011 c 218 § 3; 2004 c 102 § 2.]

76.13.170 List of forest riparian easements to be funded. (1) Before November 1st of each even-numbered year, the department must recommend to the governor a list of all forest riparian easement applications to be funded under RCW 76.13.120. The governor must determine the number of applications to receive funding and then submit the list in the capital budget request to the legislature. The list must include, but not be limited to, the date of the forestry riparian easement application, the type of qualifying timber, estimates of the value of the easement, aerial photograph maps of the application area, and an estimate of administrative costs for purchase of easements.

(2) The governor or the legislature may remove an application from the list if there is evidence that the applicant is a nonqualifying landowner for a forestry riparian easement. [2011 c 218 § 4.]

76.13.180 Sale of land to nonqualifying landowner—Selling landowner must reimburse the state. If, within the first ten years after receipt of compensation for a forestry riparian easement, a landowner sells the land on which an easement is located to a nonqualifying landowner, then the selling landowner must reimburse the state for the full compensation received for the forestry riparian easement. The department continues to hold, in the name of the state, the forestry riparian easement for the full term of the easement. The department may not transfer the easement to any entity other than another state agency. [2011 c 218 § 5.]

Chapter 76.44 RCW

INSTITUTE OF FOREST RESOURCES

Sections

76.44.020	Administration of institute.
76.44.030	Duties.
76.44.050	Authority to solicit financial support—Use of funds for the institute's operations and activities.
76.44.070	Addressing issues facing the forest sector.
76.44.080	Policy advisory committee—Membership—Compensation.
76.44.090	Director to coordinate cooperatives and centers.

76.44.020 Administration of institute. The institute of forest resources shall be administered and directed by the director of the school of forest resources at the University of Washington. [2011 c 187 § 3; 1988 c 81 § 21; 1979 c 50 § 2; 1959 c 306 § 1; 1947 c 177 § 2; Rem. Supp. 1947 § 10831-2.]

Findings—Intent—2011 c 187: "(1) The legislature finds that there are many challenges facing the forest sector, such as climate change, loss of forest cover in rural and urban areas, forest health and fire risks, the development of environmental service markets, the enhancement of habitat and biodiversity, timber and water supply, restoration of forest ecosystems, and the economic health of forest-dependent communities that rely on the retention of working forests.

(2) The legislature further finds that these forest issues, which occur in both rural and urban environments, and the approaches taken to address the issues, transcend the expertise and mission of the University of Washington school of forest resources and the associated centers and cooperatives. While each of these centers and cooperatives contribute expertise and resources, the structure and continuity for the integrated, interdisciplinary approach needed to address these complex issues is lacking.

(3) It is the intent of the legislature for the institute of forest resources to provide the structure and continuity needed by drawing contributions from the associated centers and cooperatives into a more consolidated, collaborative, interdisciplinary, and integrated process that is responsive to the critical issues confronting the forest sector." [2011 c 187 § 1.]

Additional notes found at www.leg.wa.gov

76.44.030 Duties. (1) The institute of forest resources shall pursue coordinated research and education related to the forest sector and its multiple components, including:

- Forest conservation, restoration, sustainable management, and utilization;
- The evaluation of the economic, ecological, and societal value of forest land in both the rural and urban environment;
- The manufacture and marketing of forest products, including timber products, nontimber products, environmen-

tal services, and the provision of recreation and aesthetic values.

(2) The institute of forest resources must seek to provide a framework for identifying, prioritizing, funding, and conducting interdisciplinary research critical to the forest sector and the development of integrated, synthesized information and decision support tools that improve the understanding of complex forestry issues for stakeholders, policymakers, and other interested parties.

(3) In pursuit of these objectives, the institute of forest resources is authorized to cooperate, when cooperation advances the objectives listed in this section, with other entities, including but not limited to:

- (a) Universities;
- (b) State and federal agencies;
- (c) Conservation and environmental organizations;
- (d) Community and urban forestry organizations; and
- (e) Domestic or foreign industrial and business institutions. [2011 c 187 § 4; 1979 c 50 § 5; 1947 c 177 § 3; Rem. Supp. 1947 § 10831-3.]

Findings—Intent—2011 c 187: See note following RCW 76.44.020.

Additional notes found at www.leg.wa.gov

76.44.050 Authority to solicit financial support—Use of funds for the institute's operations and activities. (1) The institute of forest resources may solicit gifts, grants, conveyances, bequests, and devices, including both real or personal property, in trust or otherwise, to be directed to the institute for carrying out the objectives of the institute as provided in this chapter.

(2) The institute of forest resources may solicit contracts for work, financial and in-kind contributions, and support from private industries, interest groups, federal and state sources, and other sources deemed appropriate by the director of the institute.

(3) The institute of forest resources may utilize separately appropriated funds of the University of Washington for the institute's operations and activities. [2011 c 187 § 5; 1979 c 50 § 7; 1947 c 177 § 5; Rem. Supp. 1947 § 10831-5.]

Findings—Intent—2011 c 187: See note following RCW 76.44.020.

Additional notes found at www.leg.wa.gov

76.44.070 Addressing issues facing the forest sector. The legislature finds that there are many issues facing the forest sector, such as climate change, forest health and fire, carbon accounting, habitat and diversity, timber and water supplies, economic competitiveness, and the economic health of forest dependent communities. Enhancing the capability to effectively address these forest issues is critical to the state of Washington. To meet this need, the University of Washington school of forest resources will continue to work with the various interests concerned with the state's forest resources, including the legislature, state and federal governments, environmental organizations, local communities, the timber industry, and tribes, to improve these entities' ability to competitively recruit, educate, and train a high quality workforce. In order to meet these goals, it is important to our state, and in particular the University of Washington, to continue to have strong undergraduate and graduate programs in forestry and

natural resources to provide well-trained professionals to meet workforce needs. [2011 c 187 § 2; 2010 c 188 § 2.]

Findings—Intent—2011 c 187: See note following RCW 76.44.020.

Findings—Intent—2010 c 188: "(1) The legislature finds that sustainably managed commercial forestry produces jobs and revenue while also providing clean water, clean air, renewable energy, wildlife habitat, open space, and carbon storage, among other ecological values. For these reasons, maintaining a base of forest lands that may be utilized for sustainably managed commercial forestry is of utmost importance to the state.

(2) The legislature finds that the promotion and fostering of the economic success of the forest products industry with the goal of keeping sustainably managed forestry as a priority land use, and helping to secure the timber managing, growing, harvesting, transporting, and manufacturing jobs is made possible by a vibrant working forest land base.

(3) The legislature further finds that maintaining sustainable working forests is important for the quality of life of all Washingtonians, and that sustainable forest practices can help to maintain and restore the vitality of Washington's communities while also helping to preserve Washington's natural landscapes and ecosystems.

(4) The legislature further finds that it is necessary to assist landowners in gaining access to additional sources of revenue, such as emerging ecosystem services markets, and to help landowners diversify their incomes, improve the ecological functions of their lands, and pass their lands and the lands' associated benefits to future generations.

(5) The legislature further finds that the conservation and restoration of forest ecosystems provide services to the residents of the state that help improve water and habitat quality, help avoid carbon emissions, help address impacts associated with climate change, and help natural resources adapt to these impacts.

(6) The legislature further finds that ecosystem services markets can lead to efficient, innovative, and effective conservation and restoration actions and facilitate improved integration of public and private investment.

(7) Therefore, it is the intent of the legislature to develop tools to facilitate small and industrial forest landowners' access to market capital from existing and emerging ecosystem services markets.

(8) The legislature further intends to enable forest landowners who provide ecosystem services access to financing to protect, restore, and maintain the ecological values provided by protection of public resources." [2010 c 188 § 1.]

76.44.080 Policy advisory committee—Membership—Compensation. (1) The director of the school of forest resources at the University of Washington may, at the discretion of the director, appoint and maintain an eleven-member policy advisory committee to advise the director on policies for the institute of forest resources that are consistent with the institute's objectives as provided in this chapter.

(2) If activated, the membership of the policy advisory committee must represent, to the extent possible, the various interests concerned with the institute of forest resources, including state and federal agencies, tribal governments, conservation and environmental organizations, urban forestry interests, rural communities, industry, and business.

(3) Members of the advisory committee may not receive any salary or other compensation for service on the advisory committee. However, each member may be compensated, at the discretion of the director of the institute, for each day in actual attendance at or traveling to and from meetings of the advisory committee in accordance with RCW 43.03.220 together with travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2011 c 187 § 6.]

Findings—Intent—2011 c 187: See note following RCW 76.44.020.

76.44.090 Director to coordinate cooperatives and centers. The director of the school of forest resources at the University of Washington shall coordinate the various cooperatives and centers within the school of forest resources to

promote a holistic, efficient, and integrated approach that broadens the research and outreach programs and addresses issues facing the forest sector. [2011 c 187 § 7.]

Findings—Intent—2011 c 187: See note following RCW 76.44.020.

Chapter 76.48 RCW

SPECIALIZED FOREST PRODUCTS

Sections

76.48.121 Display of master license.
76.48.151 Penalties—Affirmative defense.

76.48.121 Display of master license. Every first or secondary specialized forest products buyer purchasing specialty wood and every specialty wood processor must prominently display the master license issued under RCW 19.02.070 and endorsed with the respective licenses or registrations or a copy of the master license at each location where the buyer or processor receives specialty wood if the first or secondary specialized forest products buyer or specialty wood processor is required to possess a license incorporated into the master license system created in chapter 19.02 RCW. [2011 c 298 § 34; 2009 c 245 § 13; 2005 c 401 § 9; 1995 c 366 § 9; 1979 ex.s. c 94 § 11; 1977 ex.s. c 147 § 13. Formerly RCW 76.48.098.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Additional notes found at www.leg.wa.gov

76.48.151 Penalties—Affirmative defense. (1) Except as provided in RCW 76.48.141, a person who violates a provision of this chapter is guilty of a gross misdemeanor punishable by a fine of not more than one thousand dollars, imprisonment in the county jail for up to three hundred sixty-four days, or by both a fine and imprisonment.

(2) In any prosecution for a violation of this chapter's requirements to obtain or possess a specialized forest products permit, true copy, bill of lading, authorization, or sales invoice, it is an affirmative defense, if established by the defendant by a preponderance of the evidence, that:

(a) The specialized forest products were harvested from the defendant's own land; or

(b) The specialized forest products were harvested with the permission of the landowner. [2011 c 96 § 56; 2009 c 245 § 16; 2007 c 392 § 1; 1995 c 366 § 13; 1977 ex.s. c 147 § 10; 1967 ex.s. c 47 § 14. Formerly RCW 76.48.130.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Additional notes found at www.leg.wa.gov

Title 77

FISH AND WILDLIFE

Chapters

77.08 General terms defined.
77.12 Powers and duties.
77.15 Fish and wildlife enforcement code.
77.32 Licenses.

77.65 Food fish and shellfish—Commercial licenses.
77.70 License limitation programs.
77.85 Salmon recovery.
77.105 Recreational salmon and marine fish enhancement program.
77.115 Aquaculture disease control.

Chapter 77.08 RCW

GENERAL TERMS DEFINED

Sections

77.08.010 Definitions.
77.08.045 Migratory waterfowl terms defined.

77.08.010 Definitions. The definitions in this section apply throughout this title or rules adopted under this title unless the context clearly requires otherwise.

(1) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.

(2) "Aquatic invasive species" means any invasive, prohibited, regulated, unregulated, or unlisted aquatic animal or plant species as defined under subsections (3), (28), (40), (44), (60), and (61) of this section, aquatic noxious weeds as defined under RCW 17.26.020(5)(c), and aquatic nuisance species as defined under RCW 77.60.130(1).

(3) "Aquatic plant species" means an emergent, submersed, partially submersed, free-floating, or floating-leaving plant species that grows in or near a body of water or wetland.

(4) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(5) "Closed area" means a place where the hunting of some or all species of wild animals or wild birds is prohibited.

(6) "Closed season" means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. "Closed season" also means all hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission as an open season.

(7) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing or harvesting is prohibited.

(8) "Commercial" means related to or connected with buying, selling, or bartering.

(9) "Commission" means the state fish and wildlife commission.

(10) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(11) "Contraband" means any property that is unlawful to produce or possess.

(12) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(13) "Department" means the department of fish and wildlife.

(14) "Director" means the director of fish and wildlife.

(15) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(16) "Ex officio fish and wildlife officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fish and wildlife officer" includes special agents of the national marine fisheries service, state parks commissioned officers, United States fish and wildlife special agents, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(17) "Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

(18) "Fish and wildlife officer" means a person appointed and commissioned by the director, with authority to enforce this title and rules adopted pursuant to this title, and other statutes as prescribed by the legislature. Fish and wildlife officer includes a person commissioned before June 11, 1998, as a wildlife agent or a fisheries patrol officer.

(19) "Fish broker" means a person whose business it is to bring a seller of fish and shellfish and a purchaser of those fish and shellfish together.

(20) "Fishery" means the taking of one or more particular species of fish or shellfish with particular gear in a particular geographical area.

(21) "Freshwater" means all waters not defined as saltwater including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(22) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(23) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(24) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(25) "Game farm" means property on which wildlife is held or raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(26) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

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

(28) "Invasive species" means a plant species or a nonnative animal species that either:

(a) Causes or may cause displacement of, or otherwise threatens, native species in their natural communities;

(b) Threatens or may threaten natural resources or their use in the state;

(c) Causes or may cause economic damage to commercial or recreational activities that are dependent upon state waters; or

(d) Threatens or harms human health.

(29) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(30) "Limited-entry license" means a license subject to a license limitation program established in chapter 77.70 RCW.

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

(32) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(33) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(34) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission. "Open season" includes the first and last days of the established time.

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

(36) "Person" means and includes an individual; a corporation; a public or private entity or organization; a local, state, or federal agency; all business organizations, including corporations and partnerships; or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.

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

(38) "Personal use" means for the private use of the individual taking the fish or shellfish and not for sale or barter.

(39) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(40) "Prohibited aquatic animal species" means an invasive species of the animal kingdom that has been classified as a prohibited aquatic animal species by the commission.

(41) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(42) "Raffle" means an activity in which tickets bearing an individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle.

(43) "Recreational and commercial watercraft" includes the boat, as well as equipment used to transport the boat, and any auxiliary equipment such as attached or detached outboard motors.

(44) "Regulated aquatic animal species" means a potentially invasive species of the animal kingdom that has been classified as a regulated aquatic animal species by the commission.

(45) "Resident" means:

(a) A person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by for-

mal evidence an intent to continue residing within the state, and who is not licensed to hunt or fish as a resident in another state; and

(b) A person age eighteen or younger who does not qualify as a resident under (a) of this subsection, but who has a parent that qualifies as a resident under (a) of this subsection.

(46) "Retail-eligible species" means commercially harvested salmon, crab, and sturgeon.

(47) "Saltwater" means those marine waters seaward of river mouths.

(48) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

(49) "Senior" means a person seventy years old or older.

(50) "Shark fin" means a raw, dried, or otherwise processed detached fin or tail of a shark.

(51)(a) "Shark fin derivative product" means any product intended for use by humans or animals that is derived in whole or in part from shark fins or shark fin cartilage.

(b) "Shark fin derivative product" does not include a drug approved by the United States food and drug administration and available by prescription only or medical device or vaccine approved by the United States food and drug administration.

(52) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(53) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(54) "To fish," "to harvest," and "to take," and their derivatives means an effort to kill, injure, harass, or catch a fish or shellfish.

(55) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.

(56) "To process" and its derivatives mean preparing or preserving fish, wildlife, or shellfish.

(57) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(58) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.

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

(60) "Unlisted aquatic animal species" means a nonnative animal species that has not been classified as a prohibited aquatic animal species, a regulated aquatic animal species, or an unregulated aquatic animal species by the commission.

(61) "Unregulated aquatic animal species" means a nonnative animal species that has been classified as an unregulated aquatic animal species by the commission.

(62) "Wholesale fish dealer" means a person who, acting for commercial purposes, takes possession or ownership of fish or shellfish and sells, barter, or exchanges or attempts to

sell, barter, or exchange fish or shellfish that have been landed into the state of Washington or entered the state of Washington in interstate or foreign commerce.

(63) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state and the species *Rana catesbeiana* (bullfrog). The term "wild animal" does not include feral domestic mammals or old world rats and mice of the family Muridae of the order Rodentia.

(64) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(65) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, old world rats and mice of the family Muridae of the order Rodentia, or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

(66) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting. [2011 c 324 § 3; 2009 c 333 § 12; 2008 c 277 § 2. Prior: 2007 c 350 § 2; 2007 c 254 § 1; 2005 c 104 § 1; 2003 c 387 § 1; 2002 c 281 § 2; 2001 c 253 § 10; 2000 c 107 § 207; 1998 c 190 § 111; 1996 c 207 § 2; 1993 sp.s. c 2 § 66; 1989 c 297 § 7; 1987 c 506 § 11; 1980 c 78 § 9; 1955 c 36 § 77.08.010; prior: 1947 c 275 § 9; Rem. Supp. 1947 § 5992-19.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—2011 c 324: See note following RCW 77.15.770.

Alphabetization—2008 c 277: "The code reviser is directed to put the defined terms in RCW 77.08.010 in alphabetical order." [2008 c 277 § 1.]

Purpose—2002 c 281: "The legislature recognizes the potential economic and environmental damage that can occur from the introduction of invasive aquatic species. The purpose of this act is to increase public awareness of invasive aquatic species and enhance the department of fish and wildlife's regulatory capability to address threats posed by these species." [2002 c 281 § 1.]

Intent—1996 c 207: "It is the intent of the legislature to clarify hunting and fishing laws in light of the decision in *State v. Bailey*, 77 Wn. App. 732 (1995). The fish and wildlife commission has the authority to establish hunting and fishing seasons. These seasons are defined by limiting the times, manners of taking, and places or waters for lawful hunting, fishing, or possession of game animals, game birds, or game fish, as well as by limiting the physical characteristics of the game animals, game birds, or game fish which may be lawfully taken at those times, in those manners, and at those places or waters." [1996 c 207 § 1.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Additional notes found at www.leg.wa.gov

77.08.045 Migratory waterfowl terms defined. As used in this title or rules adopted pursuant to this title:

(1) "Migratory waterfowl" means members of the family Anatidae, including brants, ducks, geese, and swans;

(2) "Migratory bird" means migratory waterfowl and coots, snipe, doves, and band-tailed pigeon;

(3) "Migratory bird permit" means the permit that is required by RCW 77.32.350 to be in the possession of all persons to hunt migratory birds; and

(4) "Prints and artwork" means replicas of the original stamp design that are sold to the general public. Prints and artwork are not to be construed to be the migratory bird permit that is required by RCW 77.32.350. Artwork may be any facsimile of the original stamp design, including color renditions, metal duplications, or any other kind of design. [2011 1st sp.s. c 21 § 17; 2011 c 339 § 2; 1998 c 191 § 31; 1987 c 506 § 12; 1985 c 243 § 2.]

Reviser's note: This section was amended by 2011 c 339 § 2 and by 2011 1st sp.s. c 21 § 17, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 21: See note following RCW 77.23.025.

Effective date—2011 c 339: See note following RCW 43.84.092.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Additional notes found at www.leg.wa.gov

Chapter 77.12 RCW POWERS AND DUTIES

Sections

77.12.170	State wildlife account—Deposits.
77.12.177	Disposition of moneys collected—Proceeds from sale of food fish or shellfish—Unanticipated receipts.
77.12.670	Migratory bird permit/migratory bird license validations—Deposit and use of revenues.
77.12.680	Repealed.
77.12.690	Annual migratory bird permit design—Administration, sale, and distribution—Deposit and use of funds.
77.12.850	Definitions.
77.12.856	Repealed.
77.12.879	Aquatic invasive species prevention account—Aquatic invasive species prevention program for recreational and commercial watercraft—Enforcement program—Check stations—Training—Report to the legislature.
77.12.887	Washington conservation corps.

77.12.170 State wildlife account—Deposits. (1) There is established in the state treasury the state wildlife account which consists of moneys received from:

- (a) Rentals or concessions of the department;
- (b) The sale of real or personal property held for department purposes, unless the property is seized or recovered through a fish, shellfish, or wildlife enforcement action;
- (c) The assessment of administrative penalties;
- (d) The sale of licenses, permits, tags, and stamps required by chapter 77.32 RCW, RCW 77.65.490, and application fees;
- (e) Fees for informational materials published by the department;
- (f) Fees for personalized vehicle, Wild on Washington, and Endangered Wildlife license plates and Washington's Wildlife license plate collection as provided in chapter 46.17 RCW;
- (g) Articles or wildlife sold by the director under this title;
- (h) Compensation for damage to department property or wildlife losses or contributions, gifts, or grants received under RCW 77.12.320. However, this excludes fish and shellfish overages, and court-ordered restitution or donations

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associated with any fish, shellfish, or wildlife enforcement action, as such moneys must be deposited pursuant to RCW 77.15.425;

(i) Excise tax on anadromous game fish collected under chapter 82.27 RCW;

(j) The department's share of revenues from auctions and raffles authorized by the commission;

(k) The sale of watchable wildlife decals under RCW 77.32.560; and

(l) Moneys received from the recreation access pass account created in RCW 79A.80.090 must be dedicated to stewardship, operations, and maintenance of department lands used for public recreation purposes; and

(m) Donations received by the director under RCW 77.12.039.

(2) State and county officers receiving any moneys listed in subsection (1) of this section shall deposit them in the state treasury to be credited to the state wildlife account. [2011 c 339 § 3; 2011 c 320 § 23; 2011 c 171 § 112; 2009 c 333 § 13. Prior: 2005 c 418 § 3; 2005 c 225 § 4; 2005 c 224 § 4; 2005 c 42 § 4; 2004 c 248 § 4; 2003 c 317 § 3; 2001 c 253 § 15; 2000 c 107 § 216; prior: 1998 c 191 § 38; 1998 c 87 § 2; 1996 c 101 § 7; 1989 c 314 § 4; 1987 c 506 § 25; 1984 c 258 § 334; prior: 1983 1st ex.s. c 8 § 2; 1983 c 284 § 1; 1981 c 310 § 2; 1980 c 78 § 30; 1979 c 56 § 1; 1973 1st ex.s. c 200 § 12 (Referendum Bill No. 33); 1969 ex.s. c 199 § 33; 1955 c 36 § 77.12.170; prior: 1947 c 275 § 27; Rem. Supp. 1947 § 5992-37.]

Reviser's note: This section was amended by 2011 c 171 § 112, 2011 c 320 § 23, and by 2011 c 339 § 3, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 339: See note following RCW 43.84.092.

Effective date—2011 c 320: See note following RCW 79A.80.005.

Findings—Intent—2011 c 320: See RCW 79A.80.005.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—2003 c 317: See note following RCW 77.32.560.

Findings—1996 c 101: See note following RCW 77.32.530.

Finding—1989 c 314: See note following RCW 77.15.098.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Intent—1984 c 258: See note following RCW 3.34.130.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Legislative intent—1981 c 310: "The legislature finds that abundant deer and elk populations are in the best interest of the state, and for many reasons the state's deer and elk populations have apparently declined. The legislature further finds that antlerless deer and elk seasons have been an issue of great controversy throughout the state, and that antlerless deer and elk seasons may contribute to a further decline in the state's deer and elk populations." [1981 c 310 § 1.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Personalized license plates—Legislative declaration: "It is declared to be the public policy of the state of Washington to direct financial resources of this state toward the support and aid of the wildlife resources existing within the state of Washington in order that the general welfare of these inhabitants of the state be served. For the purposes of *this chapter, wildlife resources are understood to be those species of wildlife other than that managed by the department of fisheries under their existing jurisdiction as well as all unclassified marine fish, shellfish, and marine invertebrates which shall remain under the jurisdiction of the director of fisheries. The legislature further finds that the preservation, protection, perpetuation, and enhancement of such wildlife resources of the state is of major concern to it,

and that aid for a satisfactory environment and ecological balance in this state for such wildlife resources serves a public interest, purpose, and desire.

It is further declared that such preservation, protection, perpetuation, and enhancement can be fostered through financial support derived on a voluntary basis from those citizens of the state of Washington who wish to assist in such objectives; that a desirable manner of accomplishing this is through offering personalized license plates for certain vehicles and campers the fees for which are to be directed to the state treasury to the credit of the **state game fund for the furtherance of the programs, policies, and activities of the state **game department in preservation, protection, perpetuation, and enhancement of the wildlife resources that abound within the geographical limits of the state of Washington.

In particular, the legislature recognizes the benefit of this program to be specifically directed toward those species of wildlife including but not limited to song birds, protected wildlife, rare and endangered wildlife, aquatic life, and specialized-habitat types, both terrestrial and aquatic, as well as all unclassified marine fish, shellfish, and marine invertebrates which shall remain under the jurisdiction of the director of fisheries that exist within the limits of the state of Washington." [1975 c 59 § 7; 1973 1st ex.s. c 200 § 1. Formerly RCW 77.12.175.]

Reviser's note: *(1) The term "this chapter" refers to chapter 77.12 RCW, where this section was originally codified, pursuant to legislative directive, as RCW 77.12.175. It was subsequently decodified by 1980 c 78 § 32.

***(2) References to the "state game fund" and "game department" mean the "state wildlife fund" and "department of wildlife." See note following RCW 77.04.020. The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

Additional notes found at www.leg.wa.gov

77.12.177 Disposition of moneys collected—Proceeds from sale of food fish or shellfish—Unanticipated receipts. (1) Except as provided in this title, state and county officers receiving the following moneys shall deposit them in the state general fund:

(a) The sale of commercial licenses required under this title, except for licenses issued under RCW 77.65.490; and

(b) Moneys received for damages to food fish or shellfish.

(2) The director shall make weekly remittances to the state treasurer of moneys collected by the department.

(3) All fines and forfeitures collected or assessed by a district court for a violation of this title or rule of the department shall be remitted as provided in chapter 3.62 RCW.

(4) Proceeds from the sale of food fish or shellfish taken in test fishing conducted by the department, to the extent that these proceeds exceed the estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270 to reimburse the department for unanticipated costs for test fishing operations in excess of the allowance in the budget approved by the legislature.

(5) Proceeds from the sale of salmon carcasses and salmon eggs from state general funded hatcheries by the *department of general administration shall be deposited in the regional fisheries enhancement group account established in RCW 77.95.090.

(6) Proceeds from the sale of herring spawn on kelp fishery licenses by the department, to the extent those proceeds exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for herring management, enhancement, and enforcement. [2011 c 339 § 4; 2001 c 253 § 16; 2000 c 107 § 10; 1996 c 267 § 3; 1995 c 367 § 11; 1993 c 340 § 48; 1989 c 176 § 4; 1987 c 202 § 230; 1984 c 258 § 332; 1983 1st ex.s. c 46 § 23; 1979 c 151 § 175; 1977 ex.s. c 327 § 33; 1975 1st ex.s.

c 223 § 1; 1969 ex.s. c 199 § 31; 1969 ex.s. c 16 § 1; 1965 ex.s. c 72 § 2; 1955 c 12 § 75.08.230. Prior: 1951 c 271 § 2; 1949 c 112 § 25; Rem. Supp. 1949 § 5780-223. Formerly RCW 75.08.230.]

***Reviser's note:** The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Effective date—2011 c 339: See note following RCW 43.84.092.

Intent—1996 c 267: "It is the intent of this legislation to begin to make the statutory changes required by the fish and wildlife commission in order to successfully implement Referendum Bill No. 45." [1996 c 267 § 1.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

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

Intent—1984 c 258: See note following RCW 3.34.130.

Additional notes found at www.leg.wa.gov

77.12.670 Migratory bird permit/migratory bird license validations—Deposit and use of revenues. (1) Beginning July 1, 2011, the department, after soliciting recommendations from the public, shall select the design for the *migratory bird stamp.

(2) All revenue derived from the sale of migratory bird license validations or stamps by the department to any person hunting waterfowl or to any stamp collector shall be deposited in the state wildlife account and shall be used only for that portion of the cost of printing and production of the stamps for migratory waterfowl hunters as determined by subsection (4) of this section, and for those migratory waterfowl projects specified by the director of the department for the acquisition and development of migratory waterfowl habitat in the state and for the enhancement, protection, and propagation of migratory waterfowl in the state. Migratory bird license validation and stamp funds may not be used on lands controlled by private hunting clubs or on private lands that charge a fee for public access. Migratory bird license validation and stamp funds may be used for migratory waterfowl projects on private land where public hunting is provided by written permission or on areas established by the department as waterfowl hunting closures.

(3) All revenue derived from the sale of the license validation and stamp by the department to persons hunting solely nonwaterfowl migratory birds shall be deposited in the state wildlife account and shall be used only for that portion of the cost of printing and production of the stamps for nonwaterfowl migratory bird hunters as determined by subsection (4) of this section, and for those nonwaterfowl migratory bird projects specified by the director for the acquisition and development of nonwaterfowl migratory bird habitat in the state and for the enhancement, protection, and propagation of nonwaterfowl migratory birds in the state.

(4) With regard to the revenue from license validation and stamp sales that is not the result of sales to stamp collectors, the department shall determine the proportion of migratory waterfowl hunters and solely nonwaterfowl migratory bird hunters by using the yearly migratory bird hunter harvest information program survey results or, in the event that these results are not available, other similar survey results. A two-year average of the most recent survey results shall be used to determine the proportion of the revenue attributed to migratory waterfowl hunters and the proportion attributed to solely nonwaterfowl migratory bird hunters for each fiscal year.

For fiscal year 1998-99 and for fiscal year 1999-2000, ninety-six percent of the stamp revenue shall be attributed to migratory waterfowl hunters and four percent of the stamp revenue shall be attributed to solely nonwaterfowl migratory game hunters.

(5) Acquisition shall include but not be limited to the acceptance of gifts of real estate or any interest therein or the rental, lease, or purchase of real estate or any interest therein. If the department acquires any fee interest, leasehold, or rental interest in real property under this section, it shall allow the general public reasonable access to that property and shall, if appropriate, ensure that the deed or other instrument creating the interest allows such access to the general public. If the department obtains a covenant in real property in its favor or an easement or any other interest in real property under this section, it shall exercise its best efforts to ensure that the deed or other instrument creating the interest grants to the general public in the form of a covenant running with the land reasonable access to the property. The private landowner from whom the department obtains such a covenant or easement shall retain the right of granting access to the lands by written permission, but may not charge a fee for access.

(6) The department may produce *migratory bird stamps in any given year in excess of those necessary for sale in that year. The excess stamps may be sold to the public. [2011 1st sp.s. c 21 § 15; 2002 c 283 § 2; 1998 c 191 § 32; 1987 c 506 § 53; 1985 c 243 § 4.]

***Reviser's note:** The term "migratory bird stamp" was changed to "migratory bird permit" pursuant to 2011 c 339 § 2.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Additional notes found at www.leg.wa.gov

77.12.680 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.12.690 Annual migratory bird permit design—Administration, sale, and distribution—Deposit and use of funds. (1) The director is responsible for the selection of the annual *migratory bird stamp design. The department shall create collector art prints and related artwork, utilizing the same design. The administration, sale, distribution, and other matters relating to the prints and sales of stamps with prints and related artwork shall be the responsibility of the department.

(2) The total amount brought in from the sale of prints and related artwork shall be deposited in the state wildlife account created in RCW 77.12.170. The costs of producing and marketing of prints and related artwork shall be paid out of the total amount brought in from sales of those same items. Net funds derived from the sale of prints and related artwork shall be used by the director to contract with one or more appropriate individuals or nonprofit organizations for the development of waterfowl propagation projects within Washington which specifically provide waterfowl for the Pacific flyway. The department shall not contract with any individual or organization that obtains compensation for allowing waterfowl hunting except if the individual or orga-

nization does not permit hunting for compensation on the subject property. [2011 1st sp.s. c 21 § 16; 2009 c 333 § 38. Prior: 1998 c 245 § 158; 1998 c 191 § 33; 1987 c 506 § 55; 1985 c 243 § 6.]

***Reviser's note:** The term "migratory bird stamp" was changed to "migratory bird permit" pursuant to 2011 c 339 § 2.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Additional notes found at www.leg.wa.gov

77.12.850 Definitions. The definitions in this section apply throughout RCW 77.12.850 through 77.12.860 unless the context clearly requires otherwise.

(1) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in this title, and includes:

Scientific Name	Common Name
<i>Oncorhynchus tshawytscha</i>	Chinook salmon
<i>Oncorhynchus kisutch</i>	Coho salmon
<i>Oncorhynchus keta</i>	Chum salmon
<i>Oncorhynchus gorbuscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye salmon

(2) "Department" means the department of fish and wildlife.

(3) "Stamp" means the stamp created under the Washington salmon stamp program and the Washington junior salmon stamp program, created in RCW 77.12.850 through 77.12.860. [2011 1st sp.s. c 21 § 20; 1999 c 342 § 2.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Finding—1999 c 342: "The legislature finds that salmon recovery in Washington state will involve everyone and will require funds to accomplish recovery measures. Several species of salmon in Washington are, or are expected to be, listed as threatened or endangered under the federal endangered species act. At present, these species include chinook, chum, bull trout and coho. To bring attention to the importance of the recovery of salmon and their place in Washington's heritage, raise funds for salmon recovery projects, and involve citizens of all ages, the Washington salmon stamp and Washington junior salmon stamp programs are created." [1999 c 342 § 1.]

77.12.856 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.12.879 Aquatic invasive species prevention account—Aquatic invasive species prevention program for recreational and commercial watercraft—Enforcement program—Check stations—Training—Report to the legislature. (1) The aquatic invasive species prevention account is created in the state treasury. Moneys directed to the account from RCW 88.02.640(3)(a)(i) must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the aquatic invasive species prevention account may be appropriated to the department to develop an aquatic invasive species prevention program for recreational and commercial watercraft. Funds must be expended as follows:

(a) To inspect recreational and commercial watercraft;

(b) To educate general law enforcement officers on how to enforce state laws relating to preventing the spread of aquatic invasive species;

(c) To evaluate and survey the risk posed by recreational and commercial watercraft in spreading aquatic invasive species into Washington state waters;

(d) To evaluate the risk posed by float planes in spreading aquatic invasive species into Washington state waters; and

(e) To implement an aquatic invasive species early detection and rapid response plan. The plan must address the treatment and immediate response to the introduction to Washington waters of aquatic invasive species. Agency and public review of the plan must be conducted under chapter 43.21C RCW, the state environmental policy act. If the implementation measures or actions would have a probable significant adverse environmental impact, a detailed statement under chapter 43.21C RCW must be prepared on the plan.

(3) Funds in the aquatic invasive species enforcement account created in RCW 43.43.400 may be appropriated to the department and Washington state patrol to develop an aquatic invasive species enforcement program for recreational and commercial watercraft. The department shall provide training to Washington state patrol employees working at port of entry weigh stations, and other local law enforcement employees, on how to inspect recreational and commercial watercraft for the presence of aquatic invasive species. A person who enters Washington by road transporting any commercial or recreational watercraft that has been used in any designated aquatic invasive species state or foreign country as defined by rule of the department must have in his or her possession valid documentation that the watercraft has been inspected and found free of aquatic invasive species. The department is authorized to require persons transporting recreational and commercial watercraft to stop at check stations. Check stations must be plainly marked by signs, operated by at least one uniformed fish and wildlife officer, and operated in a safe manner. Any person stopped at a check station who possesses a recreational or commercial watercraft that has been used in any designated aquatic invasive species state or foreign country as defined by rule of the department, or that is contaminated with aquatic invasive species, must bear the expense for any necessary impoundment, transportation, cleaning, and decontamination of the watercraft. Any person stopped at a check station who possesses a recreational or commercial watercraft that has been used in any designated aquatic invasive species state or foreign country as defined by rule of the department, or that is contaminated with aquatic invasive species, is exempt from the criminal penalties found in RCW 77.15.253 and 77.15.290, and forfeiture under RCW 77.15.070, if that person complies with all department directives for the proper decontamination of the watercraft and equipment.

(4) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. [2011 c 171 § 113; 2011 c 169 § 4; 2009 c 333 § 22; 2007 c 350 § 3; 2005 c 464 § 3.]

Reviser's note: This section was amended by 2011 c 169 § 4 and by 2011 c 171 § 113, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—Intent—2005 c 464: See note following RCW 88.02.560.

77.12.887 Washington conservation corps. The department shall cooperate, when appropriate, as a partner in the Washington conservation corps established in chapter 43.220 RCW. [2011 c 20 § 15.]

Findings—Intent—2011 c 20: See note following RCW 43.220.020.

Intent—Application—2011 c 20: See RCW 43.220.905.

Chapter 77.15 RCW

FISH AND WILDLIFE ENFORCEMENT CODE

Sections

77.15.020	Authority to define violation of rule as infraction—Agreement to enforce certain civil infractions.
77.15.410	Unlawful hunting of big game—Penalty.
77.15.750	Unlawful use of a department permit—Penalty.
77.15.770	Unlawful trade in shark fins—Penalty.

77.15.020 Authority to define violation of rule as infraction—Agreement to enforce certain civil infractions. (1) If the commission or director has authority to adopt a rule that is punishable as a crime under this chapter, then the commission or director may provide that violation of the rule shall be punished with notice of infraction under RCW 7.84.030. Neither the commission nor the director have the authority to adopt a rule providing that a violation punishable as an infraction shall be a crime.

(2) The director may, under the provisions of RCW 7.84.140, enter into an agreement allowing employees of the state parks and recreation commission and the department of natural resources to enforce certain civil infractions created under this title. [2011 c 320 § 17; 2005 c 321 § 2; 1998 c 190 § 3.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

Findings—Intent—2011 c 320: See RCW 79A.80.005.

77.15.410 Unlawful hunting of big game—Penalty. (1) A person is guilty of unlawful hunting of big game in the second degree if the person:

(a) Hunts for, takes, or possesses big game and the person does not have and possess all licenses, tags, or permits required under this title;

(b) Violates any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possession of big game; or

(c) Possesses big game taken during a closed season for that big game or taken from a closed area for that big game.

(2) A person is guilty of unlawful hunting of big game in the first degree if the person commits the act described in subsection (1) of this section and:

(a) The person hunts for, takes, or possesses three or more big game animals within the same course of events; or

(b) The act occurs within five years of the date of a prior conviction under this title involving unlawful hunting, killing, possessing, or taking big game.

(3)(a) Unlawful hunting of big game in the second degree is a gross misdemeanor. Upon conviction of an offense involving killing or possession of big game taken during a closed season, closed area, or taken using an unlawful method, or in excess of the bag or possession limit, the department shall revoke all of the person's hunting licenses and tags and order a suspension of the person's hunting privileges for two years.

(b) Unlawful hunting of big game in the first degree is a class C felony. Upon conviction, the department shall revoke all of the person's hunting licenses or tags and order the person's hunting privileges suspended for ten years.

(4) For the purposes of this section, "same course of events" means within one twenty-four hour period, or a pattern of conduct composed of a series of acts that are unlawful under subsection (1) of this section, over a period of time evidencing a continuity of purpose. [2011 c 133 § 1; 2005 c 406 § 4; 1999 c 258 § 3; 1998 c 190 § 10.]

77.15.750 Unlawful use of a department permit—Penalty. (1) A person is guilty of unlawful use of a department permit if the person:

(a) Violates any terms or conditions of the permit issued by the department or the director; or

(b) Violates any rule of the commission or the director applicable to the requirement for, issuance of, or use of the permit.

(2)(a) Permits covered under subsection (1) of this section include, but are not limited to, master hunter permits, crab pot removal permits and shellfish pot removal permits under RCW 77.70.500, depredation permits, landowner hunting permits, commercial carp license permits, permits to possess or dispense beer or malt liquor pursuant to RCW 66.28.210, and permits to hold, sponsor, or attend an event requiring a banquet permit from the liquor control board.

(b) Permits excluded from subsection (1) of this section include the discover pass created in RCW 79A.80.020, the vehicle access pass created in RCW 79A.80.040, the day-use permit created in RCW 79A.80.030, commercial use or activity permits, noncommercial use or activity permits, parking permits, experimental fishery permits, trial commercial fishery permits, and scientific collection permits.

(3) Unlawful use of a department permit is a misdemeanor.

(4) A person is guilty of unlawful use of an experimental fishery permit or a trial commercial fishery permit if the person:

(a) Violates any terms or conditions of the permit issued by the department or the director; or

(b) Violates any rule of the commission or the director applicable to the issuance or use of the permit.

(5) Unlawful use of an experimental fishery permit or a trial commercial fishery permit is a gross misdemeanor.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Experimental fishery permit" means a permit issued by the director for either:

(i) An "emerging commercial fishery," defined as a fishery for a newly classified species for which the department has determined that there is a need to limit participation; or

(ii) An "expanding commercial fishery," defined as a fishery for a previously classified species in a new area, by a new method, or at a new effort level, for which the department has determined that there is a need to limit participation.

(b) "Trial commercial fishery permit" means a permit issued by the department for trial harvest of a newly classified species or harvest of a previously classified species in a new area or by a new means. [2011 c 320 § 20; 2010 c 193 § 9; 2009 c 333 § 14.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

Findings—Intent—2011 c 320: See RCW 79A.80.005.

77.15.770 Unlawful trade in shark fins—Penalty. (1) Except as otherwise provided in this section, a person is guilty of unlawful trade in shark fins in the second degree if:

(a) The person sells, offers for sale, purchases, offers to purchase, or otherwise exchanges a shark fin or shark fin derivative product for commercial purposes; or

(b) The person prepares or processes a shark fin or shark fin derivative product for human or animal consumption for commercial purposes.

(2) Except as otherwise provided in this section, a person is guilty of unlawful trade in shark fins in the first degree if:

(a) The person commits the act described by subsection (1) of this section and the violation involves shark fins or a shark fin derivative product with a total market value of two hundred fifty dollars or more;

(b) The person commits the act described by subsection (1) of this section and acted with knowledge that the shark fin or shark fin derivative product originated from a shark that was harvested in an area or at a time where or when the harvest was not legally allowed or by a person not licensed to harvest the shark; or

(c) The person commits the act described by subsection (1) of this section and the violation occurs within five years of entry of a prior conviction under this section or a prior conviction for any other gross misdemeanor or felony under this title involving fish, other than a recreational fishing violation.

(3)(a) Unlawful trade in shark fins in the second degree is a gross misdemeanor. Upon conviction, the department shall suspend any commercial fishing privileges for the person that requires a license under this title for a period of one year.

(b) Unlawful trade in shark fins in the first degree is a class C felony. Upon conviction, the department shall suspend any commercial fishing privileges for the person that requires a license under this title for a period of one year.

(4) Any person who obtains a license or permit issued by the department to take or possess sharks or shark parts for bona fide research or educational purposes, and who sells, offers for sale, purchases, offers to purchase, or otherwise trades a shark fin or shark fin derivative product, exclusively for bona fide research or educational purposes, may not be held liable under or subject to the penalties of this section.

(5) Nothing in this section prohibits the sale, offer for sale, purchase, offer to purchase, or other exchange of shark fins or shark fin derivative products for commercial purposes,

or preparation or processing of shark fins or shark fin derivative products for purposes of human or animal consumption for commercial purposes, if the shark fins or shark fin derivative products were lawfully harvested or lawfully acquired prior to July 22, 2011. [2011 c 324 § 2.]

Findings—2011 c 324: "The legislature finds and declares the following:

(1) The practice of shark finning, where a shark is caught, its fins are sliced off while it is still alive, and the animal returned to the sea severely and almost always fatally wounded, constitutes a serious threat to Washington's coastal ecosystem and biodiversity. Sharks are particularly susceptible to overfishing because they only reach sexual maturity between seven to twelve years of age and hatch or birth small litters. The destruction of the population of sharks, which reside at the top of the marine food chain, is an urgent problem that upsets the balance of species in the ocean ecosystem.

(2) Shark finning condemns millions of sharks every year to slow, painful deaths. Returned to the water without their fins, the maimed sharks are attacked by other predators or drown, because most shark species must swim in order to push water through their gills. Shark finning is therefore a cruel practice contrary to the good morals of the citizens of the state of Washington.

(3) The market for shark fins drives the brutal practice of shark finning. Shark finning and trade in shark fins and shark fin derivative products are occurring all along the Pacific Coast, including the state of Washington.

(4) The consumption of shark fins and shark fin derivative products by humans may cause serious health risks, including risks from mercury." [2011 c 324 § 1.]

Lake Rufus Woods and on the north shore of Lake Rufus Woods, and a Colville Tribes tribal member identification card shall satisfy the license requirements in subsection (1) of this section on all waters of Lake Rufus Woods. [2011 c 320 § 19; 2009 c 564 § 956; 2008 c 329 § 923; 2006 c 57 § 1; 2001 c 253 § 49; 2000 c 107 § 264; 1998 c 191 § 7; 1987 c 506 § 76; 1985 c 457 § 25; 1983 c 284 § 2; 1981 c 310 § 7; 1980 c 78 § 103; 1979 ex.s. c 3 § 1; 1959 c 245 § 1; 1955 c 36 § 77.32.010. Prior: 1947 c 275 § 93; Rem. Supp. 1947 § 5992-102.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

Findings—Intent—2011 c 320: See RCW 79A.80.005.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Additional notes found at www.leg.wa.gov

Chapter 77.32 RCW LICENSES

Sections

77.32.010	Recreational license required—Activities—Pass or permit for parking.
77.32.050	Recreational and commercial licenses, permits, tags, stamps, and raffle tickets issued by authorized officials—Rules—Fees.
77.32.240	Scientific permit—Procedures—Penalties—Fees.
77.32.350	Migratory birds—Supplemental permit—Fees.
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77.32.450	Big game hunting license—Fees.
77.32.460	Small game hunting license—Turkey tags—Fees.
77.32.470	Personal use fishing licenses—Fees—Temporary fishing license—Family fishing weekend license—Rules.
77.32.510	Repealed.
77.32.520	Personal use shellfish and seaweed license—Razor clam license—Fees—License available for inspection.
77.32.560	Watchable wildlife decals.
77.32.580	Columbia river salmon and steelhead stamp or endorsement—Cost. (<i>Expires June 30, 2016.</i>)

77.32.010 Recreational license required—Activities—Pass or permit for parking. (1) Except as otherwise provided in this chapter, a recreational license issued by the director is required to hunt for or take wild animals or wild birds, fish for, take, or harvest fish, shellfish, and seaweed. A recreational fishing or shellfish license is not required for carp, smelt, and crawfish, and a hunting license is not required for bullfrogs.

(2) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or 79A.80.040 is required to park or operate a motor vehicle on a recreation site or lands, as defined in RCW 79A.80.010.

(3) During the 2009-2011 fiscal biennium to enable the implementation of the pilot project established in section 307, chapter 329, Laws of 2008, a fishing permit issued to a non-tribal member by the Colville Tribes shall satisfy the license requirements in subsection (1) of this section on the waters of

77.32.050 Recreational and commercial licenses, permits, tags, stamps, and raffle tickets issued by authorized officials—Rules—Fees. (1) All recreational and commercial licenses, permits, tags, stamps, and raffle tickets shall be issued under the authority of the commission. The commission shall adopt rules for the issuance of licenses, permits, tags, stamps, and raffle tickets, and for the collection, payment, and handling of license fees, including terms and conditions to govern dealers, and dealer fees. A transaction fee on commercial and recreational documents issued through an automated licensing system may be set by the commission and collected from licensees. The department may authorize all or part of such fee to be paid directly to a contractor providing automated licensing system services. The department and dealers shall collect and retain dealer fees of at least two dollars for purchase of a standard hunting or fishing recreational license document or commercial license document, except that the commission may set a lower dealer fee for issuance of tags or when a licensee buys a license that involves a stamp or display card format rather than a standard department licensing document form. Dealer fees must be uniform throughout the state.

(2) Until September 1, 2011, the department shall charge an additional transaction fee of ten percent on all recreational licenses, permits, tags, stamps, or raffle tickets. These transaction fees must be deposited into the state wildlife account, created in RCW 77.12.170, for funding fishing and hunting opportunities for recreational license holders.

(3) The application fee is waived for all commercial license documents that are issued through the automated licensing system. [2011 c 339 § 5; 2009 c 333 § 71; 2003 c 389 § 1; 2000 c 107 § 266; 1999 c 243 § 2; 1998 c 191 § 10; 1996 c 101 § 8; 1995 c 116 § 1; 1987 c 506 § 77; 1981 c 310 § 16; 1980 c 78 § 106; 1979 ex.s. c 3 § 2; 1955 c 36 § 77.32.050. Prior: 1953 c 75 § 2; 1947 c 275 § 97; Rem. Supp. 1947 § 5992-106.]

Effective date—2011 c 339 § 5: "Section 5 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2011." [2011 c 339 § 41.]

Finding—1999 c 243: "The legislature finds that recreational license dealers are private businesses that provide the service of license sales in every part of the state. The dealers who sell recreational fishing and hunting licenses for the department of fish and wildlife perform a valuable public service function for those members of the public who purchase licenses as well as a revenue generating function for the department. The modernized fishing and hunting license format will require additional investments by license dealers in employee training and public education." [1999 c 243 § 1.]

Findings—1996 c 101: See note following RCW 77.32.530.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Additional notes found at www.leg.wa.gov

77.32.240 Scientific permit—Procedures—Penalties—Fees. A scientific permit allows the holder to collect for research or display food fish, game fish, shellfish, and wildlife, including avian nests and eggs as required in RCW 77.32.010, under conditions prescribed by the director. Before a permit is issued, the applicant shall demonstrate to the director their qualifications and establish the need for the permit. The director may require a bond of up to one thousand dollars to ensure compliance with the permit. Permits are valid for the time specified, unless sooner revoked.

Holders of permits may exchange specimens with the approval of the director.

A permit holder who violates this section shall forfeit the permit and bond and shall not receive a similar permit for one year. The fee for a scientific permit is twelve dollars. The application fee is one hundred five dollars. [2011 c 339 § 6; 1998 c 191 § 21; 1991 sp.s. c 7 § 6; 1981 c 310 § 28; 1980 c 78 § 119; 1955 c 36 § 77.32.240. Prior: 1947 c 275 § 113; Rem. Supp. 1947 § 5992-122.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Additional notes found at www.leg.wa.gov

77.32.350 Migratory birds—Supplemental permit—Fees. In addition to a small game hunting license, a supplemental permit is required to hunt for migratory birds.

A migratory bird permit is required for all persons sixteen years of age or older to hunt migratory birds. The fee for the permit for hunters is fifteen dollars for residents and nonresidents. [2011 c 339 § 7; 2009 c 333 § 72; 2002 c 283 § 1; 2000 c 107 § 270; 1998 c 191 § 25; 1998 c 191 § 24; 1992 c 41 § 1; 1991 sp.s. c 7 § 9; 1990 c 84 § 6; 1989 c 365 § 1; 1987 c 506 § 105. Prior: 1985 c 464 § 9; 1985 c 243 § 1; 1984 c 240 § 6; 1981 c 310 § 12.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

[2011 RCW Supp—page 1528]

Additional notes found at www.leg.wa.gov

77.32.370 Special hunting season permits—Fee. (1) A special hunting season permit is required to hunt in each special season.

(2) Persons may apply for special hunting season permits as provided by rule of the commission.

(3) The application fee to enter a drawing for a special hunting season permit or authorization is:

(a) Six dollars for residents, or one hundred dollars for nonresidents, for the permits in categories designated by the commission for deer or elk, female big game, or for small game;

(b) Twelve dollars for residents, or one hundred dollars for nonresidents, for the permits that the commission designates as "quality" hunts that allow the harvest of buck deer, bull elk, or allow the harvest of male big game species that are only available for hunting by special permit;

(c) Twelve dollars for residents and nonresidents to apply for special authorizations to hunt for migratory birds; and

(d) Three dollars for youth for any special hunt drawing or special authorization. [2011 c 339 § 8; 1998 c 191 § 26; 1991 sp.s. c 7 § 11; 1987 c 506 § 89; 1984 c 240 § 7; 1981 c 310 § 14.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Additional notes found at www.leg.wa.gov

77.32.380 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.32.430 Catch record card—Disposition of funds. (1) Catch record card information is necessary for proper management of the state's food fish and game fish species and shellfish resources. Catch record card administration shall be under rules adopted by the commission. There is no charge for an initial catch record card. Each subsequent or duplicate catch record card costs eleven dollars.

(2) A license to take and possess Dungeness crab is only valid in Puget Sound waters east of the Bonilla-Tatoosh line if the fisher has in possession a valid catch record card officially endorsed for Dungeness crab. The endorsement shall cost no more than seven dollars and fifty cents when purchased for a personal use saltwater, combination, or shellfish and seaweed license. The endorsement shall cost no more than three dollars when purchased for a temporary combination fishing license authorized under RCW 77.32.470(3)(a).

(3) Catch record cards issued with affixed temporary short-term charter stamp licenses are neither subject to the ten-dollar charge nor to the Dungeness crab endorsement fee provided for in this section. Charter boat or guide operators issuing temporary short-term charter stamp licenses shall affix the stamp to each catch record card issued before fishing commences. Catch record cards issued with a temporary short-term charter stamp are valid for one day.

(4) The department shall include provisions for recording marked and unmarked salmon in catch record cards issued after March 31, 2004.

(5)(a) The funds received from the sale of catch record cards, catch card penalty fees, and the Dungeness crab endorsement must be deposited into the state wildlife account created in RCW 77.12.170. One dollar of the funds received from the sale of each Dungeness crab endorsement must be used for the removal and disposal of derelict shellfish gear either directly by the department or under contract with a third party. The department is required to maintain a separate accounting of these funds and provide an annual report to the commission and the legislature by January 1st of every year. The remaining portion of the funds received from the sale of each Dungeness crab endorsement must be used for education, sampling, monitoring, and management of catch associated with the Dungeness crab recreational fisheries.

(b) Moneys allocated under this section shall supplement and not supplant other federal, state, and local funds used for Dungeness crab recreational fisheries management. [2011 c 339 § 9; 2010 c 193 § 11; 2009 c 333 § 40; 2005 c 192 § 2; 2004 c 107 § 2; 2003 c 318 § 1; 1998 c 191 § 5; 1989 c 305 § 10. Formerly RCW 75.25.190.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Intent—2004 c 107: "It is the intent of the legislature to optimize the management of the recreational allocation of Dungeness crab in Washington state. To accomplish this task, it is necessary to accurately and efficiently quantify the total catch by recreational fishers for Dungeness crab using data from catch record cards. Therefore, an endorsement fee on the catch record card paid at the time of purchasing a recreational fishing license will be required for Dungeness crab to specifically identify the recreational crab harvesting population. The endorsement fee will significantly improve the precision of the catch estimates by eliminating the current practice of sampling fishers who do not participate in the recreational crab fishery." [2004 c 107 § 1.]

Report—2004 c 107: "After the completion of one season using the Dungeness crab endorsement fee for Puget Sound recreational Dungeness crab fisheries, the department of fish and wildlife shall evaluate the effectiveness of the endorsement fee as a method for improving the accuracy of catch estimates for the Puget Sound recreational Dungeness crab fishery. The department's report shall include how the method has affected their ability to more accurately estimate the preseason allocation of the Puget Sound recreational Dungeness crab fishery and monitor in-season catch. The department shall report their findings to the appropriate committees of the legislature by May 15, 2006." [2004 c 107 § 3.]

Effective date—2004 c 107: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect May 15, 2004." [2004 c 107 § 4.]

Effective date—2003 c 318: "This act takes effect April 1, 2004." [2003 c 318 § 3.]

Additional notes found at www.leg.wa.gov

77.32.450 Big game hunting license—Fees. (1) A big game hunting license is required to hunt for big game. A big game license allows the holder to hunt for forest grouse, unclassified wildlife, and the individual species identified within a specific big game combination license package. Each big game license includes one transport tag for each species purchased in that package. A hunter may not purchase more than one license for each big game species except as authorized by rule of the commission. The fees for annual big game combination packages are as follows:

(a) Big game number 1: Deer, elk, bear, and cougar. The fee for this license is eighty-five dollars for residents,

seven hundred eighty dollars for nonresidents, and forty dollars for youth.

(b) Big game number 2: Deer and elk. The fee for this license is seventy-five dollars for residents, six hundred seventy dollars for nonresidents, and thirty-five dollars for youth.

(c) Big game number 3: Deer. The fee for this license is thirty-nine dollars for residents, three hundred ninety-three dollars for nonresidents, and eighteen dollars for youth.

(d) Big game number 4: Elk. The fee for this license is forty-four dollars for residents, four hundred fifty dollars for nonresidents, and eighteen dollars for youth.

(e) Big game number 5: Bear. The fee for this license is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(f) Big game number 6: Cougar. The fee for this license is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(2) In the event that the commission authorizes a two animal big game limit, the fees for the second animal are as follows:

(a) Elk: The fee is sixty dollars for residents, three hundred fifty dollars for nonresidents, and twenty dollars for youth.

(b) Deer: The fee is sixty dollars for residents, two hundred fifty dollars for nonresidents, and twenty dollars for youth.

(3) In the event that the commission authorizes a special permit hunt for goat, sheep, moose, or other big game species not specified the permit fees are three hundred dollars for residents, one thousand five hundred dollars for nonresidents, and fifty dollars for youth.

(4) Multiple season big game permit: The commission may, by rule, offer permits for hunters to hunt deer or elk during more than one general season. Only one deer or elk may be harvested annually under a multiple season big game permit. The fee is one hundred sixty-five dollars.

(5) Authorization to hunt the species set out under subsection (3) of this section is by special permit issued under RCW 77.32.370. [2011 c 339 § 10; 2005 c 140 § 1; 2000 c 109 § 1; 1998 c 191 § 14.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Additional notes found at www.leg.wa.gov

77.32.460 Small game hunting license—Turkey tags—Fees. (1) A small game hunting license is required to hunt for all classified wild animals and wild birds, except big game. A small game license also allows the holder to hunt for unclassified wildlife.

(a) The fee for this license is thirty-five dollars for residents, one hundred sixty-five dollars for nonresidents, and fifteen dollars for youth.

(b) The fee for this license if purchased at the same time as a big game combination license package is twenty dollars for residents, eighty-eight dollars for nonresidents, and eight dollars for youth.

(c) The fee for a three-consecutive-day small game license is sixty dollars for nonresidents.

(2) In addition to a small game license, a turkey tag is required to hunt for turkey.

(a) The fee for a primary turkey tag is fourteen dollars for residents and forty dollars for nonresidents. A primary turkey tag will, on request, be issued to the purchaser of a youth small game license at no charge.

(b) The fee for each additional turkey tag is fourteen dollars for residents, sixty dollars for nonresidents, and ten dollars for youth.

(c) All moneys received from turkey tags must be deposited in the state wildlife account. One-third of the moneys received from turkey tags must be appropriated solely for the purposes of turkey management. An additional one-third of the moneys received from turkey tags must be appropriated solely for upland game bird management. Moneys received from turkey tags may not supplant existing funds provided for these purposes. [2011 c 339 § 11; 2006 c 15 § 1; 2000 c 109 § 2; 1998 c 191 § 15.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Additional notes found at www.leg.wa.gov

77.32.470 Personal use fishing licenses—Fees—Temporary fishing license—Family fishing weekend license—Rules. (1) A personal use saltwater, freshwater, combination, temporary, or family fishing weekend license is required for all persons fifteen years of age or older to fish for or possess fish taken for personal use from state waters or offshore waters.

(2) The fees for annual personal use saltwater, freshwater, or combination licenses are as follows:

(a) A combination license allows the holder to fish for or possess fish, shellfish, and seaweed from state waters or offshore waters. The fee for this license is forty-five dollars for residents, one hundred eight dollars for nonresidents, and five dollars for youth. There is an additional fifty-cent surcharge for this license, to be deposited in the rockfish research account created in RCW 77.12.702.

(b) A saltwater license allows the holder to fish for or possess fish taken from saltwater areas. The fee for this license is twenty-five dollars for residents, fifty-two dollars for nonresidents, and five dollars for resident seniors. There is an additional fifty-cent surcharge for this license, to be deposited in the rockfish research account created in RCW 77.12.702.

(c) A freshwater license allows the holder to fish for, take, or possess food fish or game fish species in all freshwater areas. The fee for this license is twenty-five dollars for residents, seventy-five dollars for nonresidents, and five dollars for resident seniors.

(3)(a) A temporary combination fishing license is valid for one to three consecutive days and allows the holder to fish for or possess fish, shellfish, and seaweed taken from state waters or offshore waters. The fee for this temporary fishing license is:

(i) One day - Eight dollars for residents and sixteen dollars for nonresidents;

(ii) Two days - Twelve dollars for residents and twenty-four dollars for nonresidents; and

(iii) Three days - Fifteen dollars for residents and thirty dollars for nonresidents.

(b) The fee for a charter stamp is eight dollars for a one-day temporary combination fishing license for residents and

nonresidents for use on a charter boat as defined in RCW 77.65.150.

(c) Except for active duty military personnel serving in any branch of the United States armed forces, the temporary combination fishing license is not valid on game fish species for an eight-consecutive-day period beginning on the opening day of the lowland lake fishing season as defined by rule of the commission.

(d) The temporary combination fishing license fee for active duty military personnel serving in any branch of the United States armed forces is the resident rate as set forth in (a) of this subsection. Active duty military personnel must provide a valid military identification card at the time of purchase of the temporary license to qualify for the resident rate.

(e) There is an additional fifty-cent surcharge on the temporary combination fishing license and the associated charter stamp, to be deposited in the rockfish research account created in RCW 77.12.702.

(4) A family fishing weekend license allows for a maximum of six anglers: One resident and five youth; two residents and four youth; or one resident, one nonresident, and four youth. This license allows the holders to fish for or possess fish taken from state waters or offshore waters. The fee for this license is twenty dollars. This license is only valid during periods as specified by rule of the department.

(5) The commission may adopt rules to create and sell combination licenses for all hunting and fishing activities at or below a fee equal to the total cost of the individual license contained within any combination.

(6) The commission may adopt rules to allow the use of two fishing poles per fishing license holder for use on selected state waters. If authorized by the commission, license holders must purchase a two-pole stamp to use a second pole. The proceeds from the sale of the two-pole stamp must be deposited into the state wildlife account created in RCW 77.12.170 and used for the operation and maintenance of state-owned fish hatcheries. The fee for a two-pole stamp is thirteen dollars for residents and nonresidents, and five dollars for seniors. [2011 c 339 § 12; 2009 c 333 § 6; 2008 c 35 § 1; 2007 c 442 § 5; 2005 c 192 § 1; 2003 c 181 § 1; 1998 c 191 § 16.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Findings—Intent—Effective date—2007 c 442: See notes following RCW 77.12.702.

Effective date—2003 c 181: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2003]." [2003 c 181 § 2.]

Additional notes found at www.leg.wa.gov

77.32.510 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.32.520 Personal use shellfish and seaweed license—Razor clam license—Fees—License available for inspection. (1) A personal use shellfish and seaweed license is required for all persons other than residents or nonresidents under fifteen years of age to fish for, take, dig for, or possess seaweed or shellfish, including razor clams, for personal use from state waters or offshore waters including national park beaches.

(2) A razor clam license allows a person to harvest only razor clams for personal use from state waters, including national park beaches.

(3) The fees for annual personal use shellfish and seaweed licenses are:

(a) For a resident fifteen years of age or older, ten dollars;

(b) For a nonresident fifteen years of age or older, twenty-seven dollars; and

(c) For a senior, five dollars.

(4) The fee for an annual razor clam license is eight dollars for residents, fifteen dollars for nonresidents, and eight dollars for seniors.

(5) The fee for a three-day razor clam license is five dollars for both residents and nonresidents.

(6) A personal use shellfish and seaweed license or razor clam license must be in immediate possession of the licensee and available for inspection while a licensee is harvesting shellfish or seaweed. However, the license does not need to be visible at all times. [2011 c 339 § 13; 2007 c 336 § 1; 2004 c 248 § 1; 2000 c 107 § 27; 1999 c 243 § 3; 1998 c 191 § 2; 1994 c 255 § 4; 1993 sp.s. c 17 § 3. Formerly RCW 75.25.092.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Report—2007 c 336: "The department of fish and wildlife shall monitor the sale of personal use shellfish and seaweed licenses and razor clam licenses for four years from July 22, 2007. If in any of the four years the number of license sales drop more than ten percent from July 22, 2007, then the department of fish and wildlife shall report the sales and revenue data for the licenses along with any relevant information regarding the reasons for the decrease to the legislature." [2007 c 336 § 2.]

Finding—Effective date—1999 c 243: See notes following RCW 77.32.050.

Finding—1993 sp.s. c 17: "The legislature finds that additional cost savings can be realized by simplifying the department of fisheries recreational licensing system. The legislature finds that significant benefits will accrue to recreational fishers from streamlining the department of fisheries recreational licensing system. The legislature finds recreational license fees and commercial landing taxes have not been increased in recent years. The legislature finds that reduction in important department of fisheries programs can be avoided by increasing license fees and commercial landing taxes. The legislature finds that it is in the best interest of the state to avoid significant reductions in current department of fisheries activities." [1993 sp.s. c 17 § 1.]

Additional notes found at www.leg.wa.gov

77.32.560 Watchable wildlife decals. (1) The department may sell watchable wildlife decals. Proceeds from the sale of the decal must be deposited into the state wildlife account created in RCW 77.12.170 and must be dedicated to the support of the department's watchable wildlife activities. The department may also use proceeds from the sale of the decal for marketing the decal and for marketing watchable wildlife activities in the state.

(2) The term "watchable wildlife activities" includes but is not limited to: Initiating partnerships with communities to jointly develop watchable wildlife projects, building infrastructure to serve wildlife viewers, assisting and training communities in conducting wildlife watching events, developing destination wildlife viewing corridors and trails, tours, maps, brochures, and travel aides, and offering grants to assist rural communities in identifying key wildlife attractions and ways to protect and promote them.

(3) The commission must adopt by rule the cost of the watchable wildlife decal. A person may, at their discretion, contribute more than the cost as set by the commission by rule for the watchable wildlife decal in order to support watchable wildlife activities. [2011 c 320 § 18; 2009 c 333 § 42; 2003 c 317 § 2.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

Findings—Intent—2011 c 320: See RCW 79A.80.005.

Findings—2003 c 317: "The legislature finds that healthy wildlife populations significantly contribute to the economic vitality of Washington's rural areas through increased opportunities for watchable wildlife and related tourism. Travel related to watchable wildlife is one of the fastest growing segments of the travel industry. Much of this travel occurs off-season, creating jobs and providing revenue to local businesses and governments during otherwise slow periods. The watchable wildlife industry is particularly important to Washington's rural economies.

The legislature also finds that it is vital to support programs that enhance watchable wildlife activities and tourism, while also protecting the wildlife resources that attract the viewers. A revenue source must be created and directed to the watchable wildlife programs of the department of fish and wildlife to develop watchable wildlife opportunities in cooperation with other local, state, and federal agencies, and nongovernmental organizations." [2003 c 317 § 1.]

77.32.580 Columbia river salmon and steelhead stamp or endorsement—Cost. (Expires June 30, 2016.)

(1) In addition to a recreational license required under this chapter, a Columbia river salmon and steelhead stamp or endorsement is required in order for any person fifteen years of age or older to fish recreationally for salmon or steelhead in the Columbia river and its tributaries where these fisheries have been authorized by the department. The cost for each stamp or endorsement is seven dollars and fifty cents for residents and nonresidents and six dollars for youth and seniors. The department shall deposit all receipts from stamp or endorsement purchases into the Columbia river recreational salmon and steelhead pilot stamp program account created in RCW 77.12.714.

(2) For the purposes of this section and RCW 77.12.712 and 77.12.714 through 77.12.718, the term "Columbia river" means the Columbia river from a line across the Columbia river between Rocky Point in Washington and Tongue Point in Oregon to the Chief Joseph dam. [2011 c 339 § 14; 2009 c 420 § 3.]

Expiration date—2011 c 339 § 14: "Section 14 of this act expires June 30, 2016." [2011 c 339 § 40.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Not subject to transaction fee—2009 c 420: "A Columbia river salmon and steelhead stamp or endorsement is not subject to the additional ten percent transaction fee on recreational licenses, permits, tags, stamps, or raffle tickets to be charged during the 2009-2011 biennium under chapter 333, Laws of 2009 if it or a subsequent version thereof becomes law." [2009 c 420 § 11.]

Expiration date—2009 c 420 §§ 2-6: See note following RCW 77.12.712.

Intent—Scope of authority—2009 c 420: See notes following RCW 77.12.712.

Chapter 77.65 RCW

FOOD FISH AND SHELLFISH— COMMERCIAL LICENSES

Sections

77.65.020 Transfer of licenses—Restrictions—Fees—Inheritability.

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77.65.020 Transfer of licenses—Restrictions—Fees—Inheritability. (1) Unless otherwise provided in this title, a license issued under this chapter is not transferable from the license holder to any other person.

(2) The following restrictions apply to transfers of commercial fishery licenses, salmon delivery licenses, and salmon charter licenses that are transferable between license holders:

(a) The license holder shall surrender the previously issued license to the department.

(b) The department shall complete no more than one transfer of the license in any seven-day period.

(c) The fee to transfer a license from one license holder to another is:

(i) The same as the resident license renewal fee if the license is not limited under chapter 77.70 RCW;

(ii) Three and one-half times the resident renewal fee if the license is not a commercial salmon license and the license is limited under chapter 77.70 RCW;

(iii) Fifty dollars if the license is a commercial salmon license and is limited under chapter 77.70 RCW;

(iv) Five hundred dollars if the license is a Dungeness crab-coastal fishery license; or

(v) If a license is transferred from a resident to a nonresident, an additional fee is assessed that is equal to the difference between the resident and nonresident license fees at the time of transfer, to be paid by the transferee.

(d) In addition to the fees under (c) of this subsection, an application fee of one hundred five dollars applies to all commercial license transfers.

(3) A commercial license that is transferable under this title survives the death of the holder. Though such licenses are not personal property, they shall be treated as analogous to personal property for purposes of inheritance and intestacy. Such licenses are subject to state laws governing wills, trusts, estates, intestate succession, and community property, except that such licenses are exempt from claims of creditors of the estate and tax liens. The surviving spouse, estate, or beneficiary of the estate may apply for a renewal of the

license. There is no fee for transfer of a license from a license holder to the license holder's surviving spouse or estate, or to a beneficiary of the estate. [2011 c 339 § 15; 2000 c 107 § 28; 1997 c 418 § 1; 1995 c 228 § 1; 1993 sp.s. c 17 § 34. Formerly RCW 75.28.011.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Additional notes found at www.leg.wa.gov

77.65.090 Vessel substitution—Fees. This section applies to all commercial fishery licenses, delivery licenses, and charter licenses, except for emergency salmon delivery licenses.

(1) The holder of a license subject to this section may substitute the vessel designated on the license or designate a vessel if none has previously been designated if the license holder:

(a) Surrenders the previously issued license to the department;

(b) Submits to the department an application that identifies the currently designated vessel, the vessel proposed to be designated, and any other information required by the department; and

(c) Pays to the department a fee of thirty-five dollars and an application fee of one hundred five dollars.

(2) Unless the license holder owns all vessels identified on the application described in subsection (1)(b) of this section or unless the vessel is designated on a Dungeness crab-coastal or a Dungeness crab-coastal class B fishery license, the following restrictions apply to changes in vessel designation:

(a) The department shall change the vessel designation on the license no more than four times per calendar year.

(b) The department shall change the vessel designation on the license no more than once in any seven-day period. [2011 c 339 § 16; 1994 c 260 § 11; 1993 sp.s. c 17 § 45. Formerly RCW 75.28.044.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Severability—1994 c 260: See notes following RCW 77.70.280.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Additional notes found at www.leg.wa.gov

77.65.110 Alternate operator designation—Fees. This section applies to all commercial fishery licenses, charter boat licenses, and delivery licenses.

(1) A person designated as an alternate operator must possess an alternate operator license issued under RCW 77.65.130, and be designated on the license prior to engaging in the activities authorized by the license. The holder of the commercial fishery license, charter boat license, or delivery license may designate up to two alternate operators for the license, except:

(a) Whiting—Puget Sound fishery licensees may not designate alternate operators;

(b) Emergency salmon delivery licensees may not designate alternate operators;

(c) Shrimp pot-Puget Sound fishery licensees may designate no more than one alternate operator at a time; and

(d) Shrimp trawl-Puget Sound fishery licensees may designate no more than one alternate operator at a time.

(2) The fee to change the alternate operator designation is twenty-two dollars in addition to the application fee of one hundred five dollars. [2011 c 339 § 17; 2001 c 105 § 4; 2000 c 107 § 32; 1998 c 267 § 2; 1994 c 260 § 12; 1993 c 340 § 9. Formerly RCW 75.28.046.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Severability—1994 c 260: See notes following RCW 77.70.280.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

Additional notes found at www.leg.wa.gov

77.65.150 Charter licenses and angler permits—Fees—"Charter boat" defined—Oregon charter boats—Salmon charter license renewal. (1) The director shall issue the charter licenses and angler permits listed in this section according to the requirements of this title. The licenses and permits and their annual license fees, application fees, and surcharges are:

	License or Permit	Annual Fee (RCW 77.95.090 Surcharge) (RCW 77.12.702 Surcharge)		Applica-tion Fee	Governing Section
		Resident	Nonresident		
(a)	Non-salmon charter	\$225 (plus \$35 for RCW 77.12.702 Surcharge)	\$375 (plus \$35 for RCW 77.12.702 Surcharge)	\$ 70	
(b)	Salmon charter	\$380 (plus \$100) (plus \$35 for RCW 77.12.702 Surcharge)	\$685 (plus \$100) (plus \$35 for RCW 77.12.702 Surcharge)	\$105	RCW 77.70.050
(c)	Salmon angler	\$ 0	\$ 0	\$ 0	RCW 77.70.060
(d)	Salmon roe	\$ 95	\$ 95	\$ 70	RCW 77.65.350

(2) A salmon charter license designating a vessel is required to operate a charter boat from which persons may, for a fee, fish for salmon, other food fish, and shellfish. The director may issue a salmon charter license only to a person who meets the qualifications of RCW 77.70.050.

(3) A nonsalmon charter license designating a vessel is required to operate a charter boat from which persons may, for a fee, fish for food fish other than salmon, albacore tuna, and shellfish.

(4)(a) "Charter boat" means a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use in those state waters set forth in (b) of this subsection. "Charter boat" also means a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use in offshore waters or in the waters of other states. The director may specify by rule when a vessel is a "charter boat" within this definition.

(b) A person may not operate a vessel from which persons may, for a fee, fish for food fish or shellfish in Puget Sound, Grays Harbor, Willapa Bay, Pacific Ocean waters, Lake Washington, or the Columbia river below the bridge at

Longview unless the vessel is designated on a charter boat license.

(5) A charter boat licensed in Oregon may fish without a Washington charter license under the same rules as Washington charter boat operators in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point, as long as the Oregon vessel does not take on or discharge passengers for any purpose from any Washington port, the Washington shore, or a dock, landing, or other point in Washington. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

(6) A salmon charter license under subsection (1)(b) of this section may be renewed if the license holder notifies the department by May 1st of that year that he or she will not participate in the fishery during that calendar year. The license holder must pay the one hundred dollar enhancement surcharge, a thirty-five dollar surcharge to be deposited in the rockfish research account created in RCW 77.12.702, plus a one hundred five dollar application fee, in order to be considered a valid renewal and eligible to renew the license the following year. [2011 c 339 § 18; 2007 c 442 § 3; 2006 c 186 § 1; 2000 c 107 § 36; 1998 c 190 § 95; 1997 c 76 § 2; 1995 c 104 § 1; 1993 sp.s. c 17 § 41. Prior: (1993 c 340 § 21 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 2; 1989 c 147 § 1; 1989 c 47 § 2; 1988 c 9 § 1; 1983 1st ex.s. c 46 § 112; 1979 c 60 § 1; 1977 ex.s. c 327 § 5; 1971 ex.s. c 283 § 15; 1969 c 90 § 1. Formerly RCW 75.28.095.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Findings—Intent—Effective date—2007 c 442: See notes following RCW 77.12.702.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—1977 ex.s. c 327: "The long range economic development goals for the state of Washington shall include the restoration of salmon runs to provide an increased supply of this valuable renewable resource for the benefit of commercial and recreational users and the economic well-being of the state. For the purpose of providing funds for the planning, acquisition, construction, improvement, and operation of salmon enhancement facilities within the state it is the intent of the legislature that the revenues received from fees from the issuance of vessel delivery permits, charter boat licenses, trolling gear licenses, gill net gear licenses, purse seine gear licenses, reef net gear licenses, anadromous salmon angling licenses and all moneys received from all privilege fees and fish sales taxes collected on fresh or frozen salmon or parts thereof be utilized to fund such costs.

The salmon enhancement program funded by commercial and recreational fishing fees and taxes shall be for the express benefit of all persons whose fishing activities fall under the management authority of the Washington department of fisheries and who actively participate in the funding of the enhancement costs through the fees and taxes set forth in chapters 75.28 and 82.27 RCW or through other adequate funding methods." [1980 c 98 § 8; 1977 ex.s. c 327 § 1. Formerly RCW 75.18.100.]

Limitation on issuance of salmon charter boat licenses: RCW 77.70.050.

Salmon charter boats—Angler permit, when required: RCW 77.70.060.

Additional notes found at www.leg.wa.gov

77.65.160 Commercial salmon fishery licenses—Gear and geographic designations—Fees. (1) The following commercial salmon fishery licenses are required for the license holder to use the specified gear to fish for salmon in state waters. Only a person who meets the qualifications of RCW 77.70.090 may hold a license listed in this subsection.

The licenses and their annual license fees, application fees, and surcharges under RCW 77.95.090 are:

	Fishery License	Resident Fee	Nonresident Fee	Surcharge	Application Fee
(a) Salmon Gill Net—Grays Harbor-Columbia river		\$380	\$685	plus \$100	\$105
(b) Salmon Gill Net—Puget Sound		\$380	\$685	plus \$100	\$105
(c) Salmon Gill Net—Willapa Bay-Columbia river		\$380	\$685	plus \$100	\$105
(d) Salmon purse seine		\$530	\$985	plus \$100	\$105
(e) Salmon reef net		\$380	\$685	plus \$100	\$105
(f) Salmon troll		\$380	\$685	plus \$100	\$105

(2) A license issued under this section authorizes no taking or delivery of salmon or other food fish unless a vessel is designated under RCW 77.65.100.

(3) Holders of commercial salmon fishery licenses may retain incidentally caught food fish other than salmon, subject to rules of the department.

(4) A salmon troll license includes a salmon delivery license.

(5) A salmon gill net license authorizes the taking of salmon only in the geographical area for which the license is issued. The geographical designations in subsection (1) of this section have the following meanings:

(a) "Puget Sound" includes waters of the Strait of Juan de Fuca, Georgia Strait, Puget Sound and all bays, inlets, canals, coves, sounds, and estuaries lying easterly and southerly of the international boundary line and a line at the entrance to the Strait of Juan de Fuca projected northerly from Cape Flattery to the lighthouse on Tatoosh Island and then to Bonilla Point on Vancouver Island.

(b) "Grays Harbor-Columbia river" includes waters of Grays Harbor and tributary estuaries lying easterly of a line projected northerly from Point Chehalis Light to Point Brown and those waters of the Columbia river and tributary sloughs and estuaries easterly of a line at the entrance to the Columbia river projected southerly from the most westerly point of the North jetty to the most westerly point of the South jetty.

(c) "Willapa Bay-Columbia river" includes waters of Willapa Bay and tributary estuaries and easterly of a line projected northerly from Leadbetter Point to the Cape Shoalwater tower and those waters of the Columbia river and tributary sloughs described in (b) of this subsection.

(6) A commercial salmon troll fishery license may be renewed under this section if the license holder notifies the department by May 1st of that year that he or she will not participate in the fishery during that calendar year. A commercial salmon gill net, reef net, or seine fishery license may be renewed under this section if the license holder notifies the department before the third Monday in September of that year that he or she will not participate in the fishery during that calendar year. The license holder must pay the one hundred dollar enhancement surcharge, plus a one hundred five dollar application fee before the third Monday in September, in order to be considered a valid renewal and eligible to renew the license the following year.

(7) Notwithstanding the annual license fees and surcharges established in subsection (1) of this section, a person who holds a resident commercial salmon fishery license shall pay an annual license fee of one hundred dollars plus the surcharge and application fee if all of the following conditions are met:

(a) The license holder is at least seventy-five years of age;

(b) The license holder owns a fishing vessel and has fished with a resident commercial salmon fishery license for at least thirty years; and

(c) The commercial salmon fishery license is for a geographical area other than the Puget Sound.

An alternate operator may not be designated for a license renewed at the one hundred dollar annual fee under this subsection (7). [2011 c 339 § 19; 2001 c 244 § 1; 2000 c 107 § 37; 1997 c 76 § 1; 1996 c 267 § 28; 1993 sp.s. c 17 § 35; (1993 c 340 § 12 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 3; 1985 c 107 § 1; 1983 1st ex.s. c 46 § 113; 1965 ex.s. c 73 § 2; 1959 c 309 § 10; 1955 c 12 § 75.28.110. Prior: 1951 c 271 § 9; 1949 c 112 § 69(1); Rem. Supp. 1949 § 5780-507(1). Formerly RCW 75.28.110.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Intent—Effective date—1996 c 267: See notes following RCW 77.12.177.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Limitations on issuance of commercial salmon fishing licenses: RCW 77.70.090.

Additional notes found at www.leg.wa.gov

77.65.170 Salmon delivery license—Fees—Restrictions—Revocation. (1) A salmon delivery license is required for a commercial fishing vessel to deliver salmon taken for commercial purposes in offshore waters to a place or port in the state. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. The annual fee for a salmon delivery license is three hundred eighty dollars for residents and six hundred eighty-five dollars for nonresidents. The application fee for a salmon delivery license is one hundred five dollars. The annual surcharge under RCW 77.95.090 is one hundred dollars for each license. Holders of nonlimited entry delivery licenses issued under RCW 77.65.210 may apply the nonlimited entry delivery license fee against the salmon delivery license fee.

(2) Only a person who meets the qualifications established in RCW 77.70.090 may hold a salmon delivery license issued under this section.

(3) A salmon delivery license authorizes no taking of salmon or other food fish or shellfish from the waters of the state.

(4) If the director determines that the operation of a vessel under a salmon delivery license results in the depletion or destruction of the state's salmon resource or the delivery into this state of salmon products prohibited by law, the director may revoke the license under the procedures of chapter 34.05 RCW. [2011 c 339 § 20; 2005 c 20 § 2; 2000 c 107 § 38; 1998 c 190 § 96; 1994 c 260 § 22; 1993 sp.s. c 17 § 36; (1993 c 340 § 13 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 4;

1983 1st ex.s. c 46 § 115; 1977 ex.s. c 327 § 3; 1971 ex.s. c 283 § 1; 1955 c 12 § 75.18.080. Prior: 1953 c 147 § 9. Formerly RCW 75.28.113, 75.18.080.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Severability—1994 c 260: See notes following RCW 77.70.280.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 77.65.150.

Limitations on issuance of salmon delivery licenses: RCW 77.70.090.

Additional notes found at www.leg.wa.gov

77.65.190 Emergency salmon delivery license—Fees—Nontransferable, nonrenewable. A person who does not qualify for a license under RCW 77.70.090 shall obtain a nontransferable emergency salmon delivery license to make one delivery from a commercial fishing vessel of salmon taken for commercial purposes in offshore waters. As used in this section, "delivery" means arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. The director shall not issue an emergency salmon delivery license unless, as determined by the director, a bona fide emergency exists. The license fee is two hundred twenty-five dollars for residents and four hundred seventy-five dollars for nonresidents. The application fee is one hundred five dollars.

An applicant for an emergency salmon delivery license shall designate no more than one vessel that will be used with the license. Alternate operator licenses are not required of persons delivering salmon under an emergency salmon delivery license. Emergency salmon delivery licenses are not renewable. [2011 c 339 § 21; 2005 c 20 § 3; 2000 c 107 § 40; 1993 sp.s. c 17 § 37; (1993 c 340 § 14 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 5; 1984 c 80 § 1. Prior: 1983 1st ex.s. c 46 § 116; 1983 c 297 § 1; 1977 ex.s. c 327 § 4; 1974 ex.s. c 184 § 3. Formerly RCW 75.28.116, 75.28.460.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 77.65.150.

Legislative intent—Severability—1974 ex.s. c 184: See notes following RCW 77.70.090.

Additional notes found at www.leg.wa.gov

77.65.200 Commercial fishery licenses for food fish fisheries—Fees—Rules for species, gear, and areas. (1) This section establishes commercial fishery licenses required for food fish fisheries and the annual fees for those licenses. As used in this section, "food fish" does not include salmon. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee		Application Fee	Vessel Required?	Limited Entry?
	Resident	Nonresident			
(a) Baitfish Lampara	\$185	\$295	\$ 70	Yes	No
(b) Baitfish purse seine	\$530	\$985	\$ 70	Yes	No
(c) Bottom fish jig	\$130	\$185	\$ 70	Yes	No
(d) Bottom fish pot	\$130	\$185	\$ 70	Yes	No
(e) Bottom fish troll	\$130	\$185	\$ 70	Yes	No
(f) Carp	\$130	\$185	\$ 70	No	No
(g) Columbia river smelt	\$380	\$685	\$ 70	No	No
(h) Dog fish set net	\$130	\$185	\$ 70	Yes	No
(i) Emerging commercial fishery (RCW 77.70.160 and 77.65.400)	\$185	\$295	\$105	Determined by rule	Determined by rule
(j) Food fish drag seine	\$130	\$185	\$ 70	Yes	No
(k) Food fish set line	\$130	\$185	\$ 70	Yes	No
(l) Food fish trawl-Non-Puget Sound	\$240	\$405	\$ 70	Yes	No
(m) Food fish trawl-Puget Sound	\$185	\$295	\$ 70	Yes	No
(n) Herring dip bag net (RCW 77.70.120)	\$175	\$275	\$ 70	Yes	Yes
(o) Herring drag seine (RCW 77.70.120)	\$175	\$275	\$ 70	Yes	Yes
(p) Herring gill net (RCW 77.70.120)	\$175	\$275	\$105	Yes	Yes
(q) Herring Lampara (RCW 77.70.120)	\$175	\$275	\$ 70	Yes	Yes
(r) Herring purse seine (RCW 77.70.120)	\$175	\$275	\$105	Yes	Yes
(s) Herring spawn-on-kelp (RCW 77.70.210)	N/A	N/A	N/A	Yes	Yes

(t) Sardine purse seine (RCW 77.70.480)	\$185	\$295	\$105	Yes	Yes
(u) Sardine purse seine tem- porary (RCW 77.70.480)	\$185	\$295	\$105	Yes	No
(v) Smelt dip bag net	\$130	\$185	\$ 70	No	No
(w) Smelt gill net	\$380	\$685	\$ 70	Yes	No
(x) Whiting-Puget Sound (RCW 77.70.130)	\$295	\$520	\$105	Yes	Yes

(2) The director may by rule determine the species of food fish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take food fish in that fishery. [2011 c 339 § 22; 2009 c 331 § 4; 2000 c 107 § 41; 1993 sp.s. c 17 § 38; (1993 c 340 § 15 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 6; 1983 1st ex.s. c 46 § 117; 1965 ex.s. c 73 § 3; 1959 c 309 § 11; 1955 c 12 § 75.28.120. Prior: 1951 c 271 § 10; 1949 c 112 § 69(2); Rem. Supp. 1949 § 5780-507(2). Formerly RCW 75.28.120.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Limitation on commercial herring fishing: RCW 77.70.120.

Additional notes found at www.leg.wa.gov

77.65.210 Nonlimited entry delivery license—Limitations—Fees. (1) Except as provided in subsection (2) of this section, a person may not use a commercial fishing vessel to deliver food fish or shellfish taken for commercial purposes in offshore waters to a port in the state without a nonlimited entry delivery license. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. As used in this section, "food fish" does not include salmon. As used in this section, "shellfish" does not include ocean pink shrimp, coastal crab, coastal spot shrimp, or fish or shellfish taken under an emerging commercial fisheries license if taken from off-shore waters. The annual license fee for a nonlimited entry delivery license is one hundred ten dollars for residents and two hundred dollars for nonresidents, and an additional thirty-five dollar surcharge for both residents and nonresidents to be deposited in the rockfish research account created in RCW 77.12.702. The application fee for a nonlimited entry delivery license is one hundred five dollars.

(2) Holders of the following licenses may deliver food fish or shellfish taken in offshore waters without a nonlimited

entry delivery license: Salmon troll fishery licenses issued under RCW 77.65.160; salmon delivery licenses issued under RCW 77.65.170; crab pot fishery licenses issued under RCW 77.65.220; food fish trawl—Non-Puget Sound fishery licenses, and emerging commercial fishery licenses issued under RCW 77.65.200; Dungeness crab—coastal fishery licenses; ocean pink shrimp delivery licenses; shrimp trawl—Non-Puget Sound fishery licenses, Washington coastal spot shrimp pot fishery licenses issued under chapter 77.70 RCW; and emerging commercial fishery licenses issued under RCW 77.65.220.

(3) A nonlimited entry delivery license authorizes no taking of food fish or shellfish from state waters. [2011 c 339 § 23; 2011 c 147 § 3; 2007 c 442 § 4; 2005 c 20 § 4; 2000 c 107 § 42; 1998 c 190 § 97; 1994 c 260 § 21. Prior: 1993 sp.s. c 17 § 39; 1993 c 376 § 3; (1993 c 340 § 16 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 7; 1983 1st ex.s. c 46 § 119; 1971 ex.s. c 283 § 5; 1965 ex.s. c 73 § 1; 1959 c 309 § 5. Formerly RCW 75.28.125, 75.28.085.]

Reviser's note: This section was amended by 2011 c 147 § 3 and by 2011 c 339 § 23, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 339: See note following RCW 43.84.092.

Findings—Intent—Effective date—2007 c 442: See notes following RCW 77.12.702.

Finding—Severability—1994 c 260: See notes following RCW 77.70.280.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Findings—Effective date—1993 c 376: See notes following RCW 77.65.380.

Additional notes found at www.leg.wa.gov

77.65.220 Commercial fishery licenses for shellfish fisheries—Fees—Rules for species, gear, and areas. (1) This section establishes commercial fishery licenses required for shellfish fisheries and the annual fees for those licenses. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee		Application Fee	Vessel Required?	Limited Entry?
	Resident	Nonresident			
(a) Burrowing shrimp	\$185	\$295	\$105	Yes	No
(b) Crab ring net- Non-Puget Sound	\$130	\$185	\$ 70	Yes	No
(c) Crab ring net- Puget Sound	\$130	\$185	\$ 70	Yes	No
(d) Dungeness crab-coastal (RCW 77.70.280)	\$295	\$520	\$105	Yes	Yes

(e) Dungeness crab-coastal, class B (RCW 77.70.280)	\$295	\$520	\$105	Yes	Yes
(f) Dungeness crab-Puget Sound (RCW 77.70.110)	\$130	\$185	\$105	Yes	Yes
(g) Emerging commercial fishery (RCW 77.70.160 and 77.65.400)	\$185	\$295	\$105	Determined by rule	Determined by rule
(h) Geoduck (RCW 77.70.220)	\$ 0	\$ 0	\$ 70	Yes	Yes
(i) Hardshell clam mechanical harvester (RCW 77.65.250)	\$530	\$985	\$ 70	Yes	No
(j) Oyster reserve (RCW 77.65.260)	\$130	\$185	\$ 70	No	No
(k) Razor clam	\$130	\$185	\$105	No	No
(l) Sea cucumber dive (RCW 77.70.190)	\$130	\$185	\$105	Yes	Yes
(m) Sea urchin dive (RCW 77.70.150)	\$130	\$185	\$105	Yes	Yes
(n) Shellfish dive	\$130	\$185	\$ 70	Yes	No
(o) Shellfish pot	\$130	\$185	\$ 70	Yes	No
(p) Shrimp pot-Puget Sound (RCW 77.70.410)	\$185	\$295	\$105	Yes	Yes
(q) Shrimp trawl-Non-Puget Sound	\$240	\$405	\$105	Yes	No
(r) Shrimp trawl-Puget Sound (RCW 77.70.420)	\$185	\$295	\$105	Yes	Yes
(s) Spot shrimp-coastal	\$185	\$295		Yes	Yes
(t) Squid	\$185	\$295	\$ 70	Yes	No

(2) The director may by rule determine the species of shellfish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take shellfish in that fishery. [2011 c 339 § 24; 2011 c 147 § 4; 2000 c 107 § 43; 1999 c 239 § 2; 1994 c 260 § 14; 1993 sp.s. c 17 § 40; (1993 c 340 § 17 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 8; 1983 1st ex.s. c 46 § 120; 1977 ex.s. c 327 § 6; 1971 ex.s. c 283 § 7; 1965 ex.s. c 73 § 4; 1959 c 309 § 12; 1955 c 12 § 75.28.130. Prior: 1951 c 271 § 11; 1949 c 112 § 69(3); Rem. Supp. 1949 § 5780-507(3). Formerly RCW 75.28.130.]

Reviser's note: This section was amended by 2011 c 147 § 4 and by 2011 c 339 § 24, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Purpose—Intent—1999 c 239: "The legislature finds that it is in the public interest to convert the Puget Sound shrimp fishery from the status of an emerging fishery to that of a limited entry fishery. The purpose of this act is to initiate this conversion, recognizing that additional details associated with the shrimp fishery limited entry program will need to be developed. The legislature intends to complete the development of the laws associated with this limited entry fishery program during the next regular legislative session and will consider recommendations from the industry and the department during this program." [1999 c 239 § 1.]

Finding—Severability—1994 c 260: See notes following RCW 77.70.280.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Dungeness crab-Puget Sound fishery license endorsement: RCW 77.70.110.

Additional notes found at www.leg.wa.gov

77.65.280 Wholesale fish dealer's license—Fees—

Exemption. A wholesale fish dealer's license is required for:

(1) A business in the state to engage in the commercial processing of food fish or shellfish, including custom canning or processing of personal use food fish or shellfish.

(2) A business in the state to engage in the wholesale selling, buying, or brokering of food fish or shellfish. A wholesale fish dealer's license is not required of those businesses which buy exclusively from Washington licensed wholesale dealers and sell solely at retail.

(3) Fishermen who land and sell their catch or harvest in the state to anyone other than a licensed wholesale dealer within or outside the state, unless the fisher has a direct retail endorsement.

(4) A business to engage in the commercial manufacture or preparation of fertilizer, oil, meal, caviar, fish bait, or other by-products from food fish or shellfish.

(5) A business employing a fish buyer as defined under RCW 77.65.340.

The annual license fee for a wholesale dealer is two hundred fifty dollars. The application fee is one hundred five dollars. A wholesale fish dealer's license is not required for persons engaged in the processing, wholesale selling, buying, or brokering of private sector cultured aquatic products as

defined in RCW 15.85.020. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules. [2011 c 339 § 25; 2002 c 301 § 5; 2000 c 107 § 48; 1993 sp.s. c 17 § 43; 1989 c 316 § 16. Prior: 1985 c 457 § 20; 1985 c 248 § 1; 1983 1st ex.s. c 46 § 132; 1979 c 66 § 1; 1965 ex.s. c 28 § 1; 1955 c 212 § 11; 1955 c 12 § 75.28.300; prior: 1951 c 271 § 28; 1949 c 112 § 72(1); Rem. Supp. 1949 § 5780-510(1). Formerly RCW 75.28.300.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Additional notes found at www.leg.wa.gov

77.65.340 Fish buyer’s license—Fees. (1) A fish buyer’s license is required of and shall be carried by each individual engaged by a wholesale fish dealer to purchase food fish or shellfish from a licensed commercial fisherman. A fish buyer may represent only one wholesale fish dealer.

(2) The annual fee for a fish buyer’s license is ninety-five dollars. The application fee is one hundred five dollars. [2011 c 339 § 26; 2000 c 107 § 50; 1993 sp.s. c 17 § 46; 1989 c 316 § 17; 1985 c 248 § 2. Formerly RCW 75.28.340.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Additional notes found at www.leg.wa.gov

77.65.390 Ocean pink shrimp—Delivery license—Fees. An ocean pink shrimp delivery license is required for a commercial fishing vessel to deliver ocean pink shrimp taken for commercial purposes in offshore waters and delivered to a port in the state. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals from state or offshore waters. The annual license fee is one hundred fifty dollars for residents and three hundred dollars for nonresidents. The application fee is one hundred five dollars. Ocean pink shrimp delivery licenses are transferable. [2011 c 339 § 27; 2005 c 20 § 5; 2000 c 107 § 51; 1993 c 376 § 4. Formerly RCW 75.28.730.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Findings—Effective date—1993 c 376: See notes following RCW 77.65.380.

77.65.440 Alternate operator—Geoduck diver—Food fish guide—Fees. The director shall issue the personal licenses listed in this section according to the requirements of this title. The licenses and their annual fees are:

Personal License	Annual Fee (RCW 77.95.090 Surcharge)		Applica-tion Fee	Governing Section
	Resident	Nonresident		
(1) Alternate Operator	\$ 35	\$ 35	\$ 70	RCW 77.65.130
(2) Geoduck Diver	\$185	\$295	\$ 70	RCW 77.65.410
(3) Food Fish Guide	\$130	\$630	\$ 70	RCW 77.65.370

(plus \$20) (plus \$100)

[2011 c 339 § 28; 2009 c 333 § 9; 2000 c 107 § 55; 1993 sp.s. c 17 § 42. Formerly RCW 75.28.780.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Additional notes found at www.leg.wa.gov

77.65.450 Trapper’s license—Fees. A state trapping license allows the holder to trap fur-bearing animals throughout the state. However, a trapper may not place traps on private property without permission of the owner, lessee, or tenant where the land is improved and apparently used, or where the land is fenced or enclosed in a manner designed to exclude intruders or to indicate a property boundary line, or where notice is given by posting in a conspicuous manner. A state trapping license is void on April 1st following the date of issuance. The fee for this license is thirty-six dollars for residents sixteen years of age or older, fifteen dollars for residents under sixteen years of age, and one hundred eighty dollars for nonresidents. The application fee is one hundred five dollars. [2011 c 339 § 29; 1991 sp.s. c 7 § 3; 1987 c 372 § 3; 1985 c 464 § 4; 1981 c 310 § 23. Prior: 1980 c 78 § 113; 1980 c 24 § 2; 1975 1st ex.s. c 15 § 28. Formerly RCW 77.32.191.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Traps placed on private property: RCW 77.32.545, 77.15.191.

Additional notes found at www.leg.wa.gov

77.65.480 Taxidermist, fur dealer, game fish guide, game farmer, anadromous game fish buyer—Licenses—Fees—Fish stocking and game contest permits. (1) A taxidermy license allows the holder to practice taxidermy for commercial purposes, as that term is defined in RCW 77.15.110. The fee for this license is one hundred eighty dollars. The application fee is seventy dollars.

(2) A fur dealer’s license allows the holder to purchase, receive, or resell raw furs for commercial purposes, as that term is defined in RCW 77.15.110. The fee for this license is one hundred eighty dollars. The application fee is seventy dollars.

(3) A game fish guide license allows the holder to offer or perform the services of a game fish guide in the taking of game fish. The fee for this license is one hundred eighty dollars for a resident and six hundred dollars for a nonresident. The application fee is seventy dollars.

(4) A game farm license allows the holder to operate a game farm to acquire, breed, grow, keep, and sell wildlife under conditions prescribed by the rules adopted pursuant to this title. The fee for this license is seventy-two dollars for the first year and forty-eight dollars for each following year. The application fee is seventy dollars.

(5) A game fish stocking permit allows the holder to release game fish into the waters of the state as prescribed by

rule of the commission. The fee for this permit is twenty-four dollars. The application fee is seventy dollars.

(6) A fishing or field trial permit allows the holder to promote, conduct, hold, or sponsor a fishing or field trial contest in accordance with rules of the commission. The fee for a fishing contest permit is twenty-four dollars. The fee for a field trial contest permit is twenty-four dollars. The application fee is seventy dollars.

(7)(a) An anadromous game fish buyer's license allows the holder to purchase or sell steelhead trout and other anadromous game fish harvested by Indian fishers lawfully exercising fishing rights reserved by federal statute, treaty, or executive order, under conditions prescribed by rule of the director. The fee for this license is one hundred eighty dollars. The application fee is one hundred five dollars.

(b) An anadromous game fish buyer's license is not required for those businesses that buy steelhead trout and other anadromous game fish from Washington licensed game fish dealers and sell solely at retail. [2011 c 339 § 30; 2009 c 333 § 11; 1991 sp.s. c 7 § 4; 1987 c 506 § 83; 1985 c 464 § 5; 1983 c 284 § 3; 1981 c 310 § 25; 1980 c 78 § 115; 1975 1st ex.s. c 15 § 30. Formerly RCW 77.32.211.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Additional notes found at www.leg.wa.gov

77.65.510 Direct retail endorsement—Fees—Responsibilities of holder and alternate operators. (1)

The department must establish and administer a direct retail endorsement to serve as a single license that permits a Washington license holder or alternate operator to commercially harvest retail-eligible species and to clean, dress, and sell his or her catch directly to consumers at retail, including over the internet. The direct retail endorsement must be issued as an optional addition to all holders of: (a) A commercial fishing license for retail-eligible species that the department offers under this chapter; and (b) an alternate operator license who are designated as an alternate operator on a commercial fishing license for retail eligible species.

(2) The direct retail endorsement must be offered at the time of application for the qualifying commercial fishing license. Individuals in possession of a qualifying commercial fishing license issued under this chapter, and alternate operators designated on such a license, may add a direct retail endorsement to their current license at any time. Individuals who do not have a commercial fishing license for retail-eligible species issued under this chapter, and who are not designated as alternate operators on such a license, may not receive a direct retail endorsement. The costs, conditions, responsibilities, and privileges associated with the endorsed commercial fishing license is not affected or altered in any way by the addition of a direct retail endorsement. These costs include the base cost of the license and any revenue and excise taxes.

(3) An individual need only add one direct retail endorsement to his or her license portfolio. If a direct retail endorsement is selected by an individual holding more than one commercial fishing license issued under this chapter, a single direct retail endorsement is considered to be added to all qualifying commercial fishing licenses held by that individual, and is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses. If a direct retail endorsement is selected by an individual designated as an alternate operator on more than one commercial license issued under this chapter, a single direct retail endorsement is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses on which the individual is designated as an alternate operator. The direct retail endorsement applies only to the Washington license holder or alternate operator obtaining the endorsement.

(4) In addition to any fees charged for the endorsed licenses and harvest documentation as required by this chapter or the rules of the department, the department may set a reasonable annual fee not to exceed the administrative costs to the department for a direct retail endorsement. The application fee is one hundred five dollars.

(5) The holder of a direct retail endorsement is responsible for documenting the commercial harvest of salmon and crab according to the provisions of this chapter, the rules of the department for a wholesale fish dealer, and the reporting requirements of the endorsed license. Any retail-eligible species caught by the holder of a direct retail endorsement must be documented on fish tickets.

(6) The direct retail endorsement must be displayed in a readily visible manner by the seller wherever and whenever a sale to someone other than a licensed wholesale dealer occurs. The commission may require that the holder of a direct retail endorsement notify the department up to eighteen hours before conducting an in-person sale of retail-eligible species, except for in-person sales that have a cumulative retail sales value of less than one hundred fifty dollars in a twenty-four hour period that are sold directly from the vessel. For sales occurring in a venue other than in person, such as over the internet, through a catalog, or on the phone, the direct retail endorsement number of the seller must be provided to the buyer both at the time of sale and the time of delivery. All internet sales must be conducted in accordance with federal laws and regulations.

(7) The direct retail endorsement is to be held by a natural person and is not transferrable or assignable. If the endorsed license is transferred, the direct retail endorsement immediately becomes void, and the transferor is not eligible for a full or prorated reimbursement of the annual fee paid for the direct retail endorsement. Upon becoming void, the holder of a direct retail endorsement must surrender the physical endorsement to the department.

(8) The holder of a direct retail endorsement must abide by the provisions of Title 69 RCW as they apply to the processing and retail sale of seafood. The department must distribute a pamphlet, provided by the department of agriculture, with the direct retail endorsement generally describing the labeling requirements set forth in chapter 69.04 RCW as they apply to seafood.

(9) The holder of a qualifying commercial fishing license issued under this chapter, or an alternate operator designated on such a license, must either possess a direct retail endorsement or a wholesale dealer license provided for in RCW 77.65.280 in order to lawfully sell their catch or harvest in the state to anyone other than a licensed wholesale dealer.

(10) The direct retail endorsement entitles the holder to sell a retail-eligible species only at a temporary food service establishment as that term is defined in RCW 69.06.045, or directly to a restaurant or other similar food service business. [2011 c 339 § 31; 2009 c 195 § 1; 2003 c 387 § 2; 2002 c 301 § 2.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—2002 c 301: "The legislature finds that commercial fishing is vitally important not just to the economy of Washington, but also to the cultural heritage of the maritime communities in the state. Fisher men and women have a long and proud history in the Pacific Northwest. State and local governments should seek out ways to enable and encourage these professionals to share the rewards of their craft with the nonfishing citizens of and visitors to the state of Washington by encouraging the exploration and development of new niche markets." [2002 c 301 § 1.]

Effective date—2002 c 301: "This act takes effect July 1, 2002." [2002 c 301 § 12.]

77.65.530 Washington-coastal spot shrimp pot fishery license. (1) A Washington-coastal spot shrimp pot fishery license is required to:

- (a) Use spot shrimp pot gear to fish for spot shrimp;
- (b) Possess spot shrimp; and
- (c) Deliver spot shrimp.

(2) Washington-coastal spot shrimp pot fishery licenses require vessel designation under RCW 77.65.100.

(3) A violation of this section is punishable under RCW 77.15.500. [2011 c 147 § 1.]

77.65.540 Coastal spot shrimp fishery—Report to the legislature. (Expires July 31, 2016.) (1) The director shall provide a report to the legislature, consistent with RCW 43.01.036, regarding the coastal spot shrimp fishery. The report must include any recommended changes to the licensing program created in RCW 77.65.530 deemed appropriate by the director. The report must take into consideration the status of the coastal spot shrimp population, the impact of the removal of coastal spot shrimp to the marine ecosystem, and the market for coastal spot shrimp.

(2) The report required by this section must be delivered by January 7, 2016.

(3) This section expires July 31, 2016. [2011 c 147 § 6.]

Chapter 77.70 RCW

LICENSE LIMITATION PROGRAMS

Sections

77.70.005	Definitions.
77.70.080	Salmon charter boats—Angler permit—Total number of anglers limited—Permit transfer—Fees.
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77.70.260	Ocean pink shrimp—Single delivery license—Fees.
77.70.490	Pacific sardines—Purse seine fishery license—Fees—Adoption of rules regarding bycatch.
77.70.510	Washington-coastal spot shrimp pot fishery license.

77.70.005 Definitions. The definitions in this section apply throughout this chapter and related rules adopted by the department unless the context clearly requires otherwise.

(1) "Deliver" or "delivery" means arrival at a place or port, and includes arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters.

(2) "Pacific sardine" and "pilchard" means the species *Sardinops sagax*.

(3) "Spot shrimp" means the species *Pandalus platyceros*. [2011 c 147 § 5; 2009 c 331 § 1.]

77.70.080 Salmon charter boats—Angler permit—Total number of anglers limited—Permit transfer—Fees.

(1) The total number of anglers authorized by the director shall not exceed the total number authorized for 1980.

(2) Angler permits issued under RCW 77.70.060 are transferable. All or a portion of the permit may be transferred to another salmon charter license holder.

(3) The angler permit holder and proposed transferee shall notify the department when transferring an angler permit, and the director shall issue a new angler permit certificate. If the original permit holder retains a portion of the permit, the director shall issue a new angler permit certificate reflecting the decrease in angler capacity.

(4) The department shall collect a fee of ten dollars for each certificate issued under subsection (3) of this section, plus an application fee of one hundred five dollars. [2011 c 339 § 32; 2000 c 107 § 62; 1993 c 340 § 31; 1983 1st ex.s. c 46 § 144; 1979 c 101 § 5. Formerly RCW 75.30.100.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

Effective date—Intent—1979 c 101: See notes following RCW 77.70.060.

77.70.190 Sea cucumber dive fishery license—Limitation on issuance—Surcharge—Sea cucumber dive fishery account—Transfer of license—Fee—Issuance of new licenses. (1) A sea cucumber dive fishery license is required to take sea cucumbers for commercial purposes. A sea cucumber dive fishery license authorizes the use of only one diver in the water at any time during sea cucumber harvest operations. If the same vessel has been designated on two sea cucumber dive fishery licenses, two divers may be in the water. A natural person may not hold more than two sea cucumber dive fishery licenses.

(2) Except as provided in subsection (6) of this section, the director shall issue no new sea cucumber dive fishery licenses. For licenses issued for the year 2000 and thereafter, the director shall renew existing licenses only to a natural person who held the license at the end of the previous year. If a sea cucumber dive fishery license is not held by a natural person as of December 31, 1999, it is not renewable. However, if the license is not held because of revocation or suspension of licensing privileges, the director shall renew the license in the name of a natural person at the end of the revocation or suspension if the license holder applies for renewal of the license before the end of the year in which the revocation or suspension ends.

(3) Where a licensee failed to obtain the license during either of the previous two years because of a license suspen-

sion by the director or the court, the licensee may qualify for a license by establishing that the person held such a license during the last year in which the person was eligible.

(4) Surcharges as provided for in this section shall be collected and deposited into the sea cucumber dive fishery account hereby created in the custody of the state treasurer. The collections and deposits must continue, as set forth in (a) and (b) of this subsection, through license year 2013, or until the number of licenses is reduced to twenty, whichever occurs first. Only the director or the director's designee may authorize expenditures from the account. The sea cucumber dive fishery account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Expenditures from the account shall only be used to retire sea cucumber licenses until the number of licenses is reduced to twenty, and thereafter shall only be used for sea cucumber management and enforcement. The director or the director's designee shall notify the department of revenue within thirty days when the number of licenses is reduced to twenty.

(a) A surcharge of one hundred dollars shall be charged with each sea cucumber dive fishery license renewal for licenses issued in 2000 through 2013, or until the number of licenses is reduced to twenty, whichever occurs first.

(b) For licenses issued for license years 2000 through 2013, or until the number of licenses is reduced to twenty, whichever occurs first, a surcharge shall be charged on the sea cucumber dive fishery license for designating an alternate operator. The surcharge shall be as follows: Five hundred dollars for the first year or each of the first two consecutive years after 1999 that any alternate operator is designated and two thousand five hundred dollars each year thereafter that any alternate operator is designated.

(5) Sea cucumber dive fishery licenses are transferable. For licenses issued for license years 2000 through 2013, or whenever the number of licenses is reduced to twenty, whichever occurs first, there is a surcharge to transfer a sea cucumber dive fishery license. The surcharge is five hundred dollars for the first transfer of a license valid for license year 2000 and two thousand five hundred dollars for any subsequent transfer, occurring in the license years 2000 through 2013, or whenever the number of licenses is reduced to twenty, whichever occurs first. The application fee to transfer a sea cucumber dive fishery license is one hundred five dollars. Notwithstanding this subsection, a one-time transfer exempt from surcharge applies for a transfer from the natural person licensed on January 1, 2000, to that person's spouse or child.

(6) If fewer than twenty persons are eligible for sea cucumber dive fishery licenses, the director may accept applications for new licenses. The additional licenses may not cause more than twenty natural persons to be eligible for a sea cucumber dive fishery license. New licenses issued under this section shall be distributed according to rules of the department that recover the value of such licensed privilege. [2011 c 339 § 33; 2010 c 193 § 15; 2005 c 110 § 2; 2001 c 253 § 59; 1999 c 126 § 2; 1998 c 190 § 105; 1993 c 340 § 44; 1990 c 61 § 2. Formerly RCW 75.30.250.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

Legislative findings—1990 c 61: "The legislature finds that a significant commercial sea cucumber fishery is developing within state waters. The potential for depletion of the sea cucumber stocks in these waters is increasing, particularly as the sea cucumber fishery becomes an attractive alternative to commercial fishers who face increasing restrictions on other types of commercial fishery activities.

The legislature finds that the number of commercial fishers engaged in commercially harvesting sea cucumbers has rapidly increased. This factor, combined with increases in market demand, has resulted in strong pressures on the supply of sea cucumbers.

The legislature finds that increased regulation of commercial sea cucumber fishing is necessary to preserve and efficiently manage the commercial sea cucumber fishery in the waters of the state.

The legislature finds that it is desirable in the long term to reduce the number of vessels participating in the commercial sea cucumber fishery to fifty vessels to preserve the sea cucumber resource, efficiently manage the commercial sea cucumber fishery in the waters of the state, and reduce conflict with upland owners.

The legislature finds that it is important to preserve the livelihood of those who have historically participated in the commercial sea cucumber fishery that began about 1970 and that the 1988 and 1989 seasons should be used to document historical participation." [1990 c 61 § 1.]

77.70.220 Geoduck fishery license—Fees—Conditions and limitations—OSHA regulations—Violations.

(1) A person shall not harvest geoduck clams commercially without a geoduck fishery license. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020. The application fee is seventy dollars.

(2) Only a person who has entered into a geoduck harvesting agreement with the department of natural resources under RCW 79.135.210 may hold a geoduck fishery license.

(3) A geoduck fishery license authorizes no taking of geoducks outside the boundaries of the public lands designated in the underlying harvesting agreement, or beyond the harvest ceiling set in the underlying harvesting agreement.

(4) A geoduck fishery license expires when the underlying geoduck harvesting agreement terminates.

(5) The director shall determine the number of geoduck fishery licenses that may be issued for each geoduck harvesting agreement, the number of units of gear whose use the license authorizes, and the type of gear that may be used, subject to RCW 77.60.070. In making those determinations, the director shall seek to conserve the geoduck resource and prevent damage to its habitat.

(6) The holder of a geoduck fishery license and the holder's agents and representatives shall comply with all applicable commercial diving safety regulations adopted by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on May 8, 1979, 84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq. A violation of those regulations is a violation of this subsection. For the purposes of this section, persons who dive for geoducks are "employees" as defined by the federal occupational safety and health act. A violation of this subsection is grounds for suspension or revocation of a geoduck fishery license following a hearing under the procedures of chapter 34.05 RCW. The director shall not suspend or revoke a geoduck fishery license if the violation has been corrected within ten days of the date the license holder receives written notice of the violation. If there is a substantial probability that a violation of the commercial diving standards could result in death or serious physical harm to a person engaged in harvesting geoduck

clams, the director shall suspend the license immediately until the violation has been corrected. If the license holder is not the operator of the harvest vessel and has contracted with another person for the harvesting of geoducks, the director shall not suspend or revoke the license if the license holder terminates its business relationship with that person until compliance with this subsection is secured.

(7) A person using a vessel in the geoduck fishery is required to apply for and obtain a vessel identification number from the department. The application fee for the vessel identification number is one hundred five dollars. [2011 c 339 § 34; 2000 c 107 § 71; 1998 c 190 § 106; 1993 c 340 § 46. Formerly RCW 75.30.280.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

77.70.260 Ocean pink shrimp—Single delivery license—Fees. The owner of an ocean pink shrimp fishing vessel that does not qualify for an ocean pink shrimp delivery license issued under RCW 77.65.390 shall obtain an ocean pink shrimp single delivery license in order to make a landing into a state port of ocean pink shrimp taken in offshore waters. The director shall not issue an ocean pink shrimp single delivery license unless, as determined by the director, a bona fide emergency exists. A maximum of six ocean pink shrimp single delivery licenses may be issued annually to any vessel. The fee for an ocean pink shrimp single delivery license is one hundred dollars. The application fee is one hundred five dollars. [2011 c 339 § 35; 2000 c 107 § 74; 1993 c 376 § 8. Formerly RCW 75.30.320.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Findings—Effective date—1993 c 376: See notes following RCW 77.65.380.

77.70.490 Pacific sardines—Purse seine fishery license—Fees—Adoption of rules regarding bycatch. (1) A Washington Pacific sardine purse seine fishery license:

(a) May only be issued to a person that held a coastal pilchard experimental fishery permit in 2008, except as otherwise provided in this section;

(b) Must be renewed annually to remain active; and

(c) Subject to the restrictions of subsections (6) and (7) of this section and RCW 77.65.040, is transferable.

(2) A Washington Pacific sardine purse seine fishery license may be issued to any person that held a coastal pilchard experimental fishery permit in 2005, 2006, or 2007 and is precluded from qualifying under subsection (1) of this section because the vessel designated on the permit sank prior to 2008.

(3) Beginning in 2010, after taking into consideration the status of the Pacific sardine population, the impact of removal of sardines and other forage fish to the marine ecosystem, including the effect on endangered marine species, and the market for Pacific sardines in the state, the director may issue:

(a) A Washington Pacific sardine purse seine fishery license to any person provided that the issuance would not raise the number of licenses beyond the number initially issued in 2009;

(b) A Washington Pacific sardine purse seine temporary annual fishery permit to any person if the combined number of active Washington Pacific sardine purse seine fishery licenses and annual temporary permits already issued during the year is less than twenty-five.

(4) The annual fee for a Washington Pacific sardine purse seine fishery license is one hundred eighty-five dollars for residents and two hundred ninety-five dollars for nonresidents. The application fee is one hundred five dollars.

(5) The fee for a Washington Pacific sardine purse seine temporary annual fishery permit is one hundred eighty-five dollars for residents and two hundred ninety-five dollars for nonresidents. The application fee is one hundred five dollars. A temporary annual fishery permit expires at the end of the calendar year in which the permit is issued.

(6) Only a person who owns or operates the vessel designated on the license or permit may hold a Washington Pacific sardine purse seine fishery license or temporary annual fishery permit.

(7) A person may not own or hold an ownership interest in more than two Washington Pacific sardine purse seine fishery licenses.

(8) The director shall adopt rules that require a person fishing under a Washington Pacific sardine purse seine fishery license or a temporary annual permit to minimize bycatch, and to the extent bycatch cannot be avoided, to minimize the mortality of such bycatch. [2011 c 339 § 36; 2009 c 331 § 3.]

Effective date—2011 c 339: See note following RCW 43.84.092.

77.70.510 Washington-coastal spot shrimp pot fishery license. (1) A Washington-coastal spot shrimp pot fishery license:

(a) May only be issued to a natural person who held a coastal spot shrimp experimental emerging commercial fishery license and coastal spot shrimp fishery permit in 2010 or had the license transferred to him or her, under RCW 77.65.020 and 77.65.040, by a person who held a coastal spot shrimp experimental emerging commercial fishery license and coastal spot shrimp fishery permit in 2010;

(b) Must be renewed annually by December 31st of the calendar year to remain active; and

(c) Subject to the restrictions of subsection (7) of this section and to RCW 77.65.020 and 77.65.040, is transferable to a natural person beginning January 1, 2012.

(2) When a person fails to obtain a Washington-coastal spot shrimp pot fishery license during the previous year because of a license suspension, the person may qualify for a license by establishing that the person held such a license during the last year in which the license was not suspended.

(3) The annual fee for a Washington-coastal spot shrimp pot fishery license is as specified in RCW 77.65.220.

(4) Beginning in 2013, after taking into consideration the status of the coastal spot shrimp population, the market for spot shrimp, and the number of active fishers, both nontreaty and treaty, the director may issue a Washington-coastal spot shrimp pot fishery license to a natural person if the issuance would not raise the number of active spot shrimp pot fishery licenses to more than eight.

(5) Beginning 2012, a Washington-coastal spot shrimp pot fishery license holder is prohibited from designating, on the Washington-coastal spot shrimp pot fishery license:

(a) A vessel whose surveyed length overall is more than ten feet longer than the surveyed length overall of the vessel designated on the licensee's coastal spot shrimp experimental emerging commercial fishery license as of March 31, 2003; and

(b) A vessel whose surveyed length overall exceeds ninety feet.

(6) In the event the Washington-coastal spot shrimp pot fishery license is transferred by sale, lease, inheritance, or lottery, and pursuant to subsection (4) of this section, the vessel length restriction associated with that license must remain attached to the license.

(7) A natural person may not own or hold an ownership interest in more than one Washington-coastal spot shrimp pot fishery license at a time.

(8) Only a person who owns or is designated as an operator of the vessel designated on the license may hold a Washington-coastal spot shrimp pot fishery license.

(9) Nothing in this section:

(a) Requires the commission to open a commercial coastal spot shrimp fishery in any given year;

(b) Prohibits the commission from closing or limiting an opened commercial coastal spot shrimp fishery for any reason; or

(c) Confers any right of compensation to the holder of a Washington-coastal spot shrimp pot fishery license if the license is revoked, limited, or modified by the legislature.

(10) Issuance of a Washington-coastal spot shrimp pot fishery license does not create, and may not be construed to create, any right, title, or interest in the coastal spot shrimp resource.

(11) The legislature recognizes that Washington-coastal spot shrimp pot fishery licenses may be revoked by future legislatures if the fishery is found to have jeopardized the sustainability of the coastal spot shrimp resource or the marine ecosystem. [2011 c 147 § 2.]

Chapter 77.85 RCW SALMON RECOVERY

Sections

77.85.130 Allocation of funds—Procedures and criteria.

77.85.130 Allocation of funds—Procedures and criteria. (1) The salmon recovery funding board shall develop procedures and criteria for allocation of funds for salmon habitat projects and salmon recovery activities on a statewide basis to address the highest priorities for salmon habitat protection and restoration. To the extent practicable the board shall adopt an annual allocation of funding. The allocation should address both protection and restoration of habitat, and should recognize the varying needs in each area of the state on an equitable basis. The board has the discretion to partially fund, or to fund in phases, salmon habitat projects. The board may annually establish a maximum amount of funding available for any individual project, subject to available fund-

ing. No projects required solely as a mitigation or a condition of permitting are eligible for funding.

(2)(a) In evaluating, ranking, and awarding funds for projects and activities the board shall give preference to projects that:

(i) Are based upon the limiting factors analysis identified under RCW 77.85.060;

(ii) Provide a greater benefit to salmon recovery based upon the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHIAP), and any comparable science-based assessment when available;

(iii) Will benefit listed species and other fish species;

(iv) Will preserve high quality salmonid habitat;

(v) Are included in a regional or watershed-based salmon recovery plan that accords the project, action, or area a high priority for funding;

(vi) Are, except as provided in RCW 77.85.240, sponsored by an entity that is a Puget Sound partner, as defined in RCW 90.71.010; and

(vii) Are projects referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(b) In evaluating, ranking, and awarding funds for projects and activities the board shall also give consideration to projects that:

(i) Are the most cost-effective;

(ii) Have the greatest matched or in-kind funding;

(iii) Will be implemented by a sponsor with a successful record of project implementation;

(iv) Involve members of the Washington conservation corps established in chapter 43.220 RCW or the veterans conservation corps established in RCW 43.60A.150; and

(v) Are part of a regionwide list developed by lead entities.

(3) The board may reject, but not add, projects from a habitat project list submitted by a lead entity for funding.

(4) The board shall establish criteria for determining when block grants may be made to a lead entity. The board may provide block grants to the lead entity to implement habitat project lists developed under RCW 77.85.050, subject to available funding. The board shall determine an equitable minimum amount of project funds for each recovery region, and shall distribute the remainder of funds on a competitive basis. The board may also provide block grants to the lead entity or regional recovery organization to assist in carrying out functions described under this chapter. Block grants must be expended consistent with the priorities established for the board in subsection (2) of this section. Lead entities or regional recovery organizations receiving block grants under this subsection shall provide an annual report to the board summarizing how funds were expended for activities consistent with this chapter, including the types of projects funded, project outcomes, monitoring results, and administrative costs.

(5) The board may waive or modify portions of the allocation procedures and standards adopted under this section in the award of grants or loans to conform to legislative appropriations directing an alternative award procedure or when the funds to be awarded are from federal or other sources requiring other allocation procedures or standards as a condi-

tion of the board's receipt of the funds. The board shall develop an integrated process to manage the allocation of funding from federal and state sources to minimize delays in the award of funding while recognizing the differences in state and legislative appropriation timing.

(6) The board may award a grant or loan for a salmon recovery project on private or public land when the landowner has a legal obligation under local, state, or federal law to perform the project, when expedited action provides a clear benefit to salmon recovery, and there will be harm to salmon recovery if the project is delayed. For purposes of this subsection, a legal obligation does not include a project required solely as a mitigation or a condition of permitting.

(7) Property acquired or improved by a project sponsor may be conveyed to a federal agency if: (a) The agency agrees to comply with all terms of the grant or loan to which the project sponsor was obligated; or (b) the board approves: (i) Changes in the terms of the grant or loan, and the revision or removal of binding deed of right instruments; and (ii) a memorandum of understanding or similar document ensuring that the facility or property will retain, to the extent feasible, adequate habitat protections; and (c) the appropriate legislative authority of the county or city with jurisdiction over the project area approves the transfer and provides notification to the board.

(8) Any project sponsor receiving funding from the salmon recovery funding board that is not subject to disclosure under chapter 42.56 RCW must, as a mandatory contractual prerequisite to receiving the funding, agree to disclose any information in regards to the expenditure of that funding as if the project sponsor was subject to the requirements of chapter 42.56 RCW.

(9) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2011 c 20 § 16. Prior: 2007 c 341 § 36; 2007 c 257 § 1; prior: 2005 c 309 § 8; 2005 c 271 § 1; 2005 c 257 § 3; prior: 2000 c 107 § 102; 2000 c 15 § 1; 1999 sp.s. c 13 § 5. Formerly RCW 75.46.170.]

Findings—Intent—2011 c 20: See note following RCW 43.220.020.

Intent—Application—2011 c 20: See RCW 43.220.905.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Findings—Purpose—2005 c 257: See note following RCW 43.60A.150.

Additional notes found at www.leg.wa.gov

Chapter 77.105 RCW

RECREATIONAL SALMON AND MARINE FISH ENHANCEMENT PROGRAM

Sections

77.105.005	Findings—Intent.
77.105.020	Department responsibilities—Report to the legislature.
77.105.030	Planning and operation of programs—Assistance from nondepartmental sources.
77.105.040	Repealed.
77.105.050	Marine bottomfish species—Research, methods, and programs for artificial rearing.
77.105.060	through 77.105.130 Repealed.
77.105.160	Puget Sound recreational fisheries enhancement oversight committee—Created—Duties—Report to the legislature.

77.105.170 Managing salmon to increase recreational angling opportunities in Puget Sound.

77.105.005 Findings—Intent. (1) The legislature finds the sheltered waters of Puget Sound (waters east of the Sekiu river) have historically provided the citizens of the state with the safest and most convenient access to productive marine recreational fishing.

(2) The legislature further recognizes the economic value in restoring and rebuilding the recreational fishing opportunities in Puget Sound for salmon and marine bottomfish, and that these opportunities have declined in the past two decades. Investments made in recreational fishing programs will repay the people of the state many times over in increased economic activity and in an improved quality of life.

(3) It is the intent of the legislature to improve recreational fishing opportunities in Puget Sound and Lake Washington from current levels and increase the economic benefits from the fishery, particularly recognizing the unique recreational experience provided by the winter salmon fishery. In addition, the legislature has determined that the number of angler trips expended in these waters is the measure of fishing opportunity. [2011 c 266 § 1; 1993 sp.s. c 2 § 82. Formerly RCW 75.54.005.]

77.105.020 Department responsibilities—Report to the legislature.

(1) Consistent with available revenue, commission policies, tribal comanager agreements, and limitations of the endangered species act, the department, in consultation with the oversight committee created in RCW 77.105.160, shall adaptively manage the Puget Sound recreational salmon and marine fish enhancement program to maximize the benefits to the Puget Sound recreational fishery.

(2) The department has the following duties:

(a) The department shall utilize a program of hatchery-based salmon enhancement and solicit support from cooperative projects, regional enhancement groups, and other supporting organizations to improve recreational salmon fishing in Puget Sound.

(b) The department may conduct comprehensive research on resident and migratory salmon production opportunities on marine bottomfish production limitations, and on methods for artificial propagation of depleted marine bottomfish.

(c) The program must facilitate continued and improved recreational fishing opportunities in Puget Sound and Lake Washington as measured by increased angler trips of participation. The coordinator, as identified in RCW 77.105.010, shall assist the oversight committee with development of recommendations for outcome-based goals and objectives to assess the effectiveness of the program.

(d) The director shall meet with the oversight committee each year to review and approve these goals and objectives.

(e) The director and oversight committee shall report annually to the commission on the goals of the program and the effectiveness of the program in meeting those goals. Objectives include, but are not limited to, an increase in salmon and bottomfish angler trips.

(f) The department and the oversight committee shall seek to reach consensus regarding program activities and expenditures. The department shall provide the oversight committee with a written explanation when the department expends funds from the recreational fisheries enhancement account that differs substantially from oversight committee recommendations.

(g) Consistent with RCW 43.01.036, the department and oversight committee shall make a joint report to the legislature on the effectiveness of this program in biennial reports. Reports must include the goals and objectives of the previous biennium and a determination of whether the goals and objectives were met and an explanation if the department did not meet these specific objectives. [2011 c 266 § 2; 1993 sp.s. c 2 § 84. Formerly RCW 75.54.020.]

77.105.030 Planning and operation of programs—Assistance from nondepartmental sources. The department may seek recommendations from persons who are expert on the planning and operation of programs for enhancement of recreational fisheries. The department may use the expertise of the University of Washington school of aquatic and fishery sciences and the sea grant program to develop research and enhancement programs. [2011 c 266 § 3; 1993 sp.s. c 2 § 85. Formerly RCW 75.54.030.]

77.105.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.105.050 Marine bottomfish species—Research, methods, and programs for artificial rearing. The department may conduct research, develop methods, and implement programs for the artificial rearing and release of marine bottomfish species. Marine bottomfish species of importance in the recreational fishery are the primary emphasis. The department may use artificial habitats to restore and mitigate for degraded rockfish habitats and enhance recreational opportunities. [2011 c 266 § 5; 1993 sp.s. c 2 § 87. Formerly RCW 75.54.050.]

77.105.060 through 77.105.130 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.105.160 Puget Sound recreational fisheries enhancement oversight committee—Created—Duties—Report to the legislature. (1) The Puget Sound recreational fisheries enhancement oversight committee is created. The director shall appoint at least seven members representing sport fishing interests to the committee from a list of applicants, ensuring broad representation from the sport fishing community. Each member shall serve for a term of two years, and may be reappointed for subsequent two-year terms at the discretion of the director. Members of the committee serve without compensation.

(2) The Puget Sound recreational fisheries enhancement oversight committee has the following duties:

(a) Advise the department on all aspects of the Puget Sound recreational fisheries enhancement program;

(b) Develop recommendations, with assistance from the coordinator, for outcome-based goals and objectives to assess the effectiveness of the program;

(c) Meet with the director each year to review these goals and objectives;

(d) Report annually with the director to the commission on the goals of the program and the effectiveness of the program in meeting those goals;

(e) Review and provide guidance on the annual budget for the recreational fisheries enhancement account;

(f) Select a chair of the committee. It is the chair's duty to coordinate with the department on all issues related to the Puget Sound recreational fisheries enhancement program;

(g) Meet at least quarterly with the department's coordinator as identified in RCW 77.105.010 of the Puget Sound recreational fisheries enhancement program;

(h) Review and comment on program documents and proposed production of salmon and other species;

(i) Address other issues related to the purposes of the Puget Sound recreational fisheries enhancement program that are of interest to recreational fishers in Puget Sound; and

(j) Consistent with RCW 43.01.036, make a joint report with the department to the legislature each biennium on the status of the program. [2011 c 266 § 6; 2003 c 173 § 2.]

77.105.170 Managing salmon to increase recreational angling opportunities in Puget Sound. The department shall utilize artificial rearing of salmon to improve recreational salmon fishing in Puget Sound. In managing salmon, the department shall seek to develop and implement methods that will increase recreational angling opportunities. These methods may include, but are not limited to, the following tools:

(1) Utilization of salmon artificial rearing techniques that contribute to the recreational fisheries in Puget Sound, especially winter salmon fishing.

(2) Optimum use of hatchery salmon through expanded recreational mark-selective fisheries.

(3) Utilization of recreational salmon and marine fish enhancement program funds for catch monitoring when required to increase recreational mark-selective fisheries.

(4) Consideration of new catch and release recreational fisheries utilizing gear and methods known to minimize hooking mortality.

(5) Providing public information regarding angling opportunities and fishing methods. [2011 c 266 § 4.]

Chapter 77.115 RCW

AQUACULTURE DISEASE CONTROL

Sections

77.115.040 Registration of aquatic farmers—Fee.

77.115.040 Registration of aquatic farmers—Fee. (1) All aquatic farmers, as defined in RCW 15.85.020, shall register with the department. The application fee is one hundred five dollars. The director shall assign each aquatic farm a unique registration number and develop and maintain in an electronic database a registration list of all aquaculture farms. The department shall establish procedures to annually update

the aquatic farmer information contained in the registration list. The department shall coordinate with the department of health using shellfish growing area certification data when updating the registration list.

(2) Registered aquaculture farms shall provide the department with the following information:

- (a) The name of the aquatic farmer;
 - (b) The address of the aquatic farmer;
 - (c) Contact information such as telephone, fax, web site, and e-mail address, if available;
 - (d) The number and location of acres under cultivation, including a map displaying the location of the cultivated acres;
 - (e) The name of the landowner of the property being cultivated or otherwise used in the aquatic farming operation;
 - (f) The private sector cultured aquatic product being propagated, farmed, or cultivated; and
 - (g) Statistical production data.
- (3) The state veterinarian shall be provided with registration and statistical data by the department. [2011 c 339 § 37; 2007 c 216 § 6; 1993 sp.s. c 2 § 58; 1988 c 36 § 45; 1985 c 457 § 11. Formerly RCW 75.58.040.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Additional notes found at www.leg.wa.gov

Title 79

PUBLIC LANDS

Chapters

- 79.02 Public lands management—General.**
- 79.17 Land transfers.**
- 79.64 Funds for managing and administering lands.**
- 79.100 Derelict vessels.**
- 79.105 Aquatic lands—General.**
- 79.155 Community forest trusts.**

Chapter 79.02 RCW

PUBLIC LANDS MANAGEMENT—GENERAL

Sections

79.02.010 Definitions.

79.02.010 Definitions. The definitions in this section apply throughout this title unless the context clearly requires otherwise.

(1) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters as defined in RCW 79.105.060 that are administered by the department.

(2) "Board" means the board of natural resources.

(3) "Commissioner" means the commissioner of public lands.

(4) "Community and technical college forest reserve lands" means lands managed under RCW 79.02.420.

(5) "Community forest trust lands" means those lands acquired and managed under the provisions of chapter 79.155 RCW.

(6) "Department" means the department of natural resources.

(7)(a) "Forest biomass" means the by-products of: Current forest management activities; current forest protection treatments prescribed or permitted under chapter 76.04 RCW; or the by-products of forest health treatment prescribed or permitted under chapter 76.06 RCW.

(b) "Forest biomass" does not include wood pieces that have been treated with chemical preservatives such as: Creosote, pentachlorophenol, or copper-chrome-arsenic; wood from existing old growth forests; wood required to be left on-site under chapter 76.09 RCW, the state forest practices act; and implementing rules, and other legal and contractual requirements; or municipal solid waste.

(8) "Improvements" means anything considered a fixture in law placed upon or attached to lands administered by the department that has changed the value of the lands or any changes in the previous condition of the fixtures that changes the value of the lands.

(9) "Land bank lands" means lands acquired under RCW 79.19.020.

(10) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of a federal, state, or local governmental unit, however designated.

(11) "Public lands" means lands of the state of Washington administered by the department including but not limited to state lands, state forest lands, and aquatic lands.

(12) "State forest lands" means lands acquired under RCW 79.22.010, 79.22.040, and 79.22.020.

(13) "State lands" includes:

(a) School lands, that is, lands held in trust for the support of the common schools;

(b) University lands, that is, lands held in trust for university purposes;

(c) Agricultural college lands, that is, lands held in trust for the use and support of agricultural colleges;

(d) Scientific school lands, that is, lands held in trust for the establishment and maintenance of a scientific school;

(e) Normal school lands, that is, lands held in trust for state normal schools;

(f) Capitol building lands, that is, lands held in trust for the purpose of erecting public buildings at the state capital for legislative, executive, and judicial purposes;

(g) Institutional lands, that is, lands held in trust for state charitable, educational, penal, and reformatory institutions; and

(h) Land bank, escheat, donations, and all other lands, except aquatic lands, administered by the department that are not devoted to or reserved for a particular use by law.

(14) "Valuable materials" means any product or material on the lands, such as forest products, forage or agricultural crops, stone, gravel, sand, peat, and all other materials of value except: (a) Mineral, coal, petroleum, and gas as provided for under chapter 79.14 RCW; and (b) forest biomass as provided for under chapter 79.150 RCW. [2011 c 216 § 17. Prior: 2010 c 126 § 6; 2004 c 199 § 201; 2003 c 334 § 301; 1927 c 255 § 1; RRS § 7797-1; prior: 1911 c 36 § 1; 1907 c 256 § 1; 1897 c 89 §§ 4, 5; 1895 c 178 §§ 1, 2. Formerly RCW 79.01.004, 79.04.010.]

Part headings—2004 c 199: "Part headings used in this act are not any part of the law." [2004 c 199 § 302.]

Intent—2003 c 334: "This act is intended to make technical amendments to certain codified statutes that deal with the department of natural resources. Any statutory changes made by this act should be interpreted as technical in nature and not be interpreted to have any substantive, policy implications." [2003 c 334 § 616.]

Chapter 79.17 RCW LAND TRANSFERS

Sections

79.17.210 Real property asset base—Natural resources real property replacement account.

79.17.210 Real property asset base—Natural resources real property replacement account. (1) The legislature finds that the department has a need to maintain the real property asset base it manages and needs an accounting mechanism to complete transactions without reducing the real property asset base.

(2) The natural resources real property replacement account is created in the state treasury. This account shall consist of funds transferred or paid for the disposal or transfer of real property by the department under RCW 79.17.200 and the transfer of state lands or state forest lands into community forest trust lands under RCW 79.155.040. The funds in this account shall be used solely for the acquisition of replacement real property and may be spent only when, and as, authorized by legislative appropriation. [2011 c 216 § 13; 2003 c 334 § 118; 1992 c 167 § 1. Formerly RCW 43.30.265.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.64 RCW FUNDS FOR MANAGING AND ADMINISTERING LANDS

Sections

79.64.020 Resource management cost account—Use.
79.64.040 Deductions from proceeds of all transactions authorized—Limitations.

79.64.020 Resource management cost account—Use. A resource management cost account in the state treasury is created to be used solely for the purpose of defraying the costs and expenses necessarily incurred by the department in managing and administering state lands, community forest trust lands, and aquatic lands and the making and administering of leases, sales, contracts, licenses, permits, easements, and rights-of-way as authorized under the provisions of this title. Appropriations from the resource management cost account to the department shall be expended for no other purposes. Funds in the resource management cost account may be appropriated or transferred by the legislature for the benefit of all of the trusts from which the funds were derived. [2011 c 216 § 15; 2008 c 328 § 6004; 2004 c 199 § 226; 2003 c 334 § 520; 1993 c 460 § 1; 1985 c 57 § 80; 1981 c 4 § 2; 1961 c 178 § 2.]

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Part headings not law—2004 c 199: See note following RCW 79.02.010.

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.64.040 Deductions from proceeds of all transactions authorized—Limitations. (1) The board shall determine the amount deemed necessary in order to achieve the purposes of this chapter and shall provide by rule for the deduction of this amount from the moneys received from all leases, sales, contracts, licenses, permits, easements, and rights-of-way issued by the department and affecting state lands, community forest trust lands, and aquatic lands, provided that no deduction shall be made from the proceeds from agricultural college lands.

(2) Moneys received as deposits from successful bidders, advance payments, and security under RCW 79.15.100, 79.15.080, and 79.11.150 prior to December 1, 1981, which have not been subjected to deduction under this section are not subject to deduction under this section.

(3) Except as otherwise provided in subsections (4) and (6) of this section, the deductions authorized under this section shall not exceed twenty-five percent of the moneys received by the department in connection with any one transaction pertaining to state lands and aquatic lands other than second-class tide and shore lands and the beds of navigable waters, and fifty percent of the moneys received by the department pertaining to second-class tide and shore lands and the beds of navigable waters.

(4) Deductions authorized under this section for transactions pertaining to community forest trust lands must be established at a level sufficient to defray over time the management costs for activities prescribed in a parcel's management plan adopted pursuant to RCW 79.155.080, and, if deemed appropriate by the board consistent with RCW 79.155.090, to reimburse the state and any local entities' eligible financial contributions for acquisition of the parcel.

(5) In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys received subject to this section are the net proceeds from the contract harvesting sale.

(6) During the 2009-2011 fiscal biennium and fiscal year 2012, the twenty-five percent limitation on deductions set in subsection (3) of this section may be increased up to thirty percent by the board. [2011 1st sp.s. c 50 § 966; 2011 c 216 § 16; 2009 c 564 § 957; 2007 c 522 § 958; 2005 c 518 § 945; 2004 c 199 § 227. Prior: 2003 c 334 § 522; 2003 c 313 § 8; 2001 c 250 § 16; 1999 c 279 § 2; 1981 2nd ex.s. c 4 § 3; 1971 ex.s. c 224 § 2; 1967 ex.s. c 63 § 2; 1961 c 178 § 4.]

Reviser's note: This section was amended by 2011 c 216 § 16 and by 2011 1st sp.s. c 50 § 966, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Part headings not law—2004 c 199: See note following RCW 79.02.010.

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Additional notes found at www.leg.wa.gov

Chapter 79.100 RCW DERELICT VESSELS

Sections

- 79.100.030 Authority of authorized public entity—Owner retains primary responsibility—Limitation on civil liability.
79.100.110 Vessel abandoned or derelict upon aquatic lands—Causing a vessel to block a navigational channel—Penalty.
79.100.130 Marina owner may contract with a local government—Contract requirements.

79.100.030 Authority of authorized public entity—Owner retains primary responsibility—Limitation on civil liability. (1) An authorized public entity has the authority, subject to the processes and limitations of this chapter, to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above aquatic lands within the jurisdiction of the authorized public entity. A vessel disposal must be done in an environmentally sound manner and in accordance with all federal, state, and local laws, including the state solid waste disposal provisions provided for in chapter 70.95 RCW. Scuttling or sinking of a vessel is only permissible after obtaining the express permission of the owner or owners of the aquatic lands below where the scuttling or sinking would occur, and obtaining all necessary state and federal permits or licenses.

(2) The primary responsibility to remove a derelict or abandoned vessel belongs to the owner, operator, or lessee of the moorage facility or the aquatic lands where the vessel is located. If the authorized public entity with the primary responsibility is unwilling or unable to exercise the authority granted by this section, it may request the department to assume the authorized public entity's authority for a particular vessel. The department may at its discretion assume the authorized public entity's authority for a particular vessel after being requested to do so. For vessels not at a moorage facility, an authorized public entity with jurisdiction over the aquatic lands where the vessel is located may, at its discretion, request to assume primary responsibility for that particular vessel from the owner of the aquatic lands where the vessel is located.

(3) The authority granted by this chapter is permissive, and no authorized public entity has a duty to exercise the authority. No liability attaches to an authorized public entity that chooses not to exercise this authority. An authorized public entity, in the good faith performance of the actions authorized under this chapter, is not liable for civil damages resulting from any act or omission in the performance of the actions other than acts or omissions constituting gross negligence or willful or wanton misconduct. Any person whose assistance has been requested by an authorized public entity, who has entered into a written agreement pursuant to RCW 79.100.070, and who, in good faith, renders assistance or advice with respect to activities conducted by an authorized public entity pursuant to this chapter, is not liable for civil damages resulting from any act or omission in the rendering of the assistance or advice, other than acts or omissions constituting gross negligence or willful or wanton misconduct. [2011 c 247 § 4; 2002 c 286 § 4.]

[2011 RCW Supp—page 1548]

79.100.110 Vessel abandoned or derelict upon aquatic lands—Causing a vessel to block a navigational channel—Penalty. (1) A person who causes a vessel to become abandoned or derelict upon aquatic lands is guilty of a misdemeanor.

(2) A person who intentionally, through action or inaction and without the appropriate state, local, or federal authorization, causes a vessel to sink, break up, or block a navigational channel upon aquatic lands is guilty of a misdemeanor. [2011 c 247 § 1; 2006 c 153 § 1.]

79.100.130 Marina owner may contract with a local government—Contract requirements. A marina owner may contract with a local government for the purpose of participating in the derelict vessel removal program. The local government shall serve as the authorized public entity for the removal of the derelict or abandoned vessel from the marina owner's property. The contract must provide for the marina owner to be financially responsible for the removal costs that are not reimbursed by the department as provided under RCW 79.100.100, and any additional reasonable administrative costs incurred by the local government during the removal of the derelict or abandoned vessel. Prior to the commencement of any removal which will seek reimbursement from the derelict vessel removal program, the contract and the proposed vessel removal shall be submitted to the department for review and approval. The local government shall use the procedure specified under RCW 79.100.100(6). [2011 c 247 § 2; 2007 c 342 § 3.]

Chapter 79.105 RCW AQUATIC LANDS—GENERAL

Sections

- 79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account.

79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account. (1) After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.115.150(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to the lands; and for volunteer cooperative fish and game projects. During the 2009-2011 and 2011-2013 fiscal biennia, the aquatic lands enhancement account may also be used for scientific research as part of the adaptive management process and for developing a planning report for McNeil Island. During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may transfer from the aquatic lands enhancement

account to the state general fund such amounts as reflect excess fund balance of the account.

(2) In providing grants for aquatic lands enhancement projects, the recreation and conservation funding board shall:

(a) Require grant recipients to incorporate the environmental benefits of the project into their grant applications;

(b) Utilize the statement of environmental benefits, consideration, except as provided in RCW 79.105.610, of whether the applicant is a Puget Sound partner, as defined in RCW 90.71.010, whether a project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, and except as otherwise provided in RCW 79.105.630, and effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under RCW 35.105.050, whether the applicant is an entity that has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030 in its prioritization and selection process; and

(c) Develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grants.

(3) To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270.

(4) The department shall consult with affected interest groups in implementing this section.

(5) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2011 1st sp.s. c 50 § 967; 2010 1st sp.s. c 37 § 949; 2009 c 564 § 959; 2008 c 299 § 28; 2007 c 341 § 32. Prior: 2005 c 518 § 946; 2005 c 155 § 121; 2004 c 276 § 914; 2002 c 371 § 923; 2001 c 227 § 7; 1999 c 309 § 919; 1997 c 149 § 913; 1995 2nd sp.s. c 18 § 923; 1994 c 219 § 12; 1993 sp.s. c 24 § 927; 1987 c 350 § 1; 1985 c 57 § 79; 1984 c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9. Formerly RCW 79.90.245, 79.24.580.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 564: See note following RCW 2.68.020.

Short title—2008 c 299: See note following RCW 35.105.010.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

Finding—1994 c 219: See note following RCW 43.88.030.

Additional notes found at www.leg.wa.gov

Chapter 79.155 RCW

COMMUNITY FOREST TRUSTS

Sections

79.155.010	Findings.
79.155.020	Community forest land trust—Department authorized to create and manage.
79.155.030	Identification of lands—Minimum program management principles.
79.155.040	Department's authority.
79.155.050	Criteria for identification and prioritization of forest lands suitable for potential inclusion in the community forest trust.
79.155.060	Prioritized list identifying nominated parcels of state land or state forest land.
79.155.070	Local community must commit to preserving land as a working forest—Financial contribution.
79.155.080	Postacquisition management plan.
79.155.090	Use of revenue produced on community forest trust lands.
79.155.100	Periodic review and update of community forest trust program.
79.155.110	Statewide advisory committee.
79.155.120	Establishing community forest districts/local working forest districts—Technical assistance grants.
79.155.130	Authority to manage state lands—Authority to develop management procedures.

79.155.010 Findings. (1) The legislature finds that since the 1980s, about seventeen percent of Washington's commercial forests have been converted to other land uses.

(2) The legislature further finds that as these forests vanish, so do the multiple benefits they provide to our communities such as local timber jobs, clean air and water, carbon storage, fish and wildlife habitat, recreation areas, and open space.

(3) The legislature further finds that it has provided policy direction to the department of natural resources to protect working forest and natural resource lands at risk of conversion, while maintaining the department's obligation to manage the state's fiduciary trust lands and financial assets in the interest of the beneficiaries of the respective trust lands and assets.

(4) The legislature further finds that there are numerous tools available to acquire open space and recreation lands, but limited tools to protect working forest lands.

(5) The legislature further finds that currently the department of natural resources lacks a full complement of policy and management tools necessary to protect or manage working forest lands at high risk of conversion.

(6) The legislature further finds that through modest enhancements to existing department of natural resources' programs and authorities, the legislature can expand Washington's ability to protect communities' working forest lands, while simultaneously improving the revenue generating performance of fiduciary trust lands managed by the department of natural resources.

(7) The legislature further finds that there has been past and present legislative intent to ensure continued public access for recreation compatible with the purposes of the lands involved.

(8) The legislature further finds that there exists an interest by local communities, governments, and conservation organizations in cooperating in the establishment of working community forests. [2011 c 216 § 1.]

79.155.020 Community forest land trust—Department authorized to create and manage. (1) If deemed practicable by the commissioner, the department is autho-

rized to create and manage, consistent with the provisions of this chapter, a discrete category of natural resource lands in a nonfiduciary community forest land trust. The department is authorized to assemble, hold title to, and manage directly or through mutual agreement with other landowners land suitable for sustainable forest management, to be held in the community forest trust.

(2) All land held in the community forest trust must be held by the department and actively managed, consistent with a community working forest management plan developed under RCW 79.155.080, to generate financial support for the management of the community forest trust and to advance and sustain the working forest conservation objectives established in the management plan. [2011 c 216 § 2.]

79.155.030 Identification of lands—Minimum program management principles. (1) The department must identify lands for inclusion into the community forest trust, and manage the resulting community forest trust lands, in furtherance of goals that must be identified by the department prior to the creation of a community forest.

(2) In addition to any goals for a community forest identified by the department, the community forest trust program must satisfy the following minimum program management principles:

(a) Protecting in perpetuity working forest lands that are at a significant risk of conversion to another land use;

(b) Securing financial and social viability through sound management plans and objectives that are consistent with the values of the local community;

(c) Maintaining the land in a working status, through traditional forestry, management of specialized forest products harvest consistent with chapter 76.48 RCW, land leases, renewable energy opportunities, ecosystem services such as clean water protection or carbon storage, and other sources of revenue appropriate for the community forest to generate;

(d) Generating revenue at levels that are, at a minimum, capable of reimbursing the department for management costs and providing for some reinvestment into the management objectives of the community forest;

(e) Providing for ongoing, sustainable public recreational access, local timber jobs, clean air and water, carbon storage, fish and wildlife habitat, and open space in a manner that is compatible with management plans and objectives adopted for the community forest; and

(f) Providing educational opportunities for local communities regarding the benefits that working forests provide to Washington's economy, communities, environment, and quality of life. [2011 c 216 § 3.]

79.155.040 Department's authority. (1)(a) Except as limited by RCW 79.155.070, the department is authorized to acquire by purchase, gift, donation, grant, transfer, or other means other than eminent domain fee interest or a partial interest, including conservation easements, in lands or other real property suitable for management as part of the community forest trust and that are appropriate to further the goals of the community forest trust.

(b) The fair market value of any real property, and the associated valuable materials, of any land transferred into the

community forest trust from state lands must be provided to the beneficiaries of the transferee [transferor] trust or used for the furtherance of the transferee [transferor] trust.

(2) The department is authorized to receive funds for purposes of establishing the community forest trust from grants, gifts, bequests, or loans, whether public or private, as well as from legislative appropriation.

(3) All acquisitions of real property for the community forest trust must be approved by the board. [2011 c 216 § 4.]

79.155.050 Criteria for identification and prioritization of forest lands suitable for potential inclusion in the community forest trust. (1) The department shall, if it establishes a community forest trust program, develop criteria to be used for the identification and prioritization of forest land that is suitable for potential inclusion in the community forest trust due to its ability to most closely satisfy the goals of the community forest trust outlined in RCW 79.155.030.

(2) In prioritizing forest land for inclusion in the community forest trust, the department shall give priority consideration to lands that are:

(a) The subject of established management and revenue production objectives of potential local community partners;

(b) At greatest risk of conversion;

(c) Helping buffer commercial public or private forest lands from encroaching development;

(d) Helping to block up other community forest assets to be managed consistently with the community forest trust acquisition;

(e) Able to be managed, considering surrounding current or expected future land use, as economically sustainable working forest land either alone or in combination with adjacent and nearby working forest land, including other lands incorporated into a community forest by the department, a local governmental entity, or a not-for-profit conservation organization managing forest lands;

(f) Eligible for trust land transfer capital appropriations;

(g) Available for acquisition through existing or new programs or funding;

(h) Supporting existing or expanded forest product manufacturing infrastructure;

(i) Useful in leveraging funds to match available acquisition moneys;

(j) Positioned to have their development rights extinguished through transfer, purchase, conservation easement, lease, or by some other comparable mechanism; or

(k) Enhancing state fiduciary trust land revenues by repositioning underperforming state trust lands to provide short and long-term revenues to that trust. [2011 c 216 § 5.]

79.155.060 Prioritized list identifying nominated parcels of state land or state forest land. (1) The department shall, if it establishes a community forest trust program, submit biennially to the office of financial management and the appropriate committees of the legislature a prioritized list that identifies nominated parcels of state land or state forest land that are suitable for transfer into the community forest trust, where such a transfer is also in the best interest of the respective trust. The department shall solicit and consider

input from the board on a draft list before submitting a final prioritized list.

(2) The list of nominated parcels must reflect consideration of local nominations and the priorities outlined in RCW 79.155.050 and be delivered to the required recipients by November 1st of each even-numbered year. [2011 c 216 § 6.]

79.155.070 Local community must commit to preserving land as a working forest—Financial contribution.

(1) The department must, prior to using the authority provided in RCW 79.155.040 to acquire land for inclusion in a community forest, obtain from the local community a commitment to preserving the land as a working forest.

(2) Following initial agreement between potential local community partners and the department regarding management and revenue production objectives for the lands in question, the local commitment to preserving the land as a working forest must be demonstrated by the county, city, or other local entity providing a financial contribution to the specific community forest of at least fifty percent of the difference between the parcel's appraised fair market value and the parcel's timber and forest land value. The local community contribution may be provided through any means deemed acceptable by the department and the local contributor, including:

- (a) Traditional financing or bonding;
- (b) The purchase of conservation easements; or
- (c) The purchase or transfer of development rights.

(3) The local financial contribution must be deposited into the park land trust revolving fund created in RCW 43.30.385 and used solely for acquisition of the community forest trust land parcel or parcels for which it is intended. [2011 c 216 § 7.]

79.155.080 Postacquisition management plan. (1) All lands transferred into community forest trust status must be managed in accordance with a postacquisition management plan developed by the department consistent with this section.

(2) After exercising the authority provided in RCW 79.155.040 to acquire land for inclusion in a community forest, the department must establish a local advisory committee in cooperation with any interested and affected local government.

(3) The department must use the local advisory committee as a source of advice and comment on a postacquisition management plan. Comments and advice should, at a minimum, include plans for how the department will maintain the land's working status and economic viability objectives through revenue-generating activities that are sufficient to generate ongoing revenue at a level that reimburses administrative costs, while satisfying, or contributing to, identified community conservation and recreation objectives.

(4)(a) If, after a good faith effort by all parties, the department and the local advisory committee fail to reach a consensus on a conceptual postacquisition management plan for the parcel in question, the department may either adopt a management plan informed by the community or recommend to the board that the parcel be divested through the existing authority of the department and the board. If the parcel is

divested, then, except as otherwise provided in this subsection, proceeds must return to the park land trust revolving fund created in RCW 43.30.385.

(b) Prior to depositing the proceeds of a land divestiture under this subsection to the park land trust revolving fund, the department must first reimburse local entities that have made financial contributions to the parcel's acquisition as provided in RCW 79.155.070(2). However, local entities are only eligible for reimbursement upon divestiture under this subsection if the board determines that:

(i) The subsequent parcel use is likely to remain a working forest, the department secures full fair market value for the parcel, and the local entity's contribution was not provided by a state or federal grant; or

(ii) The funds used as part of the local contribution were originally provided through a grant that requires, as a condition of the grant, the repayment of granted dollars if the purposes of the grant are not or cannot be fulfilled and the decision to divest the land creates an inability for the purposes of the grant to be fulfilled. [2011 c 216 § 8.]

79.155.090 Use of revenue produced on community forest trust lands. (1) Any revenue produced on community forest trust lands must be, consistent with RCW 79.64.040, allocated as follows:

(a) All costs incurred by the department in managing the parcel must be fully reimbursed; and

(b) After the department's management costs are reimbursed, any remaining revenue must then be prioritized to fulfill the management objectives for the specific parcel as identified in the postacquisition management plan developed under RCW 79.155.080 consistent with the management principles outlined in RCW 79.155.030.

(2)(a) If, by the determination of the board, there is revenue remaining in any given biennium after fulfilling the requirements of subsection (1) of this section, then the board has the discretion to reimburse any local entities' eligible financial contributions for acquisition of the parcel under RCW 79.155.070(2) and any state contribution to the acquisition of the parcel up to an amount that represents fifty percent of the difference between the parcel's original appraised fair market value and the parcel's timber and forest land value. However, any funds used as part of the local contribution may not be reimbursed if the funds were originally provided through a state or federal grant, provided through a fully compensated transfer of development rights at fair market value, or provided by a donation of funds or property.

(b) If the board decides to reimburse the state and local contribution, then it must allocate the reimbursement so that fifty percent is provided to the state general fund and fifty percent is provided to any eligible partnering local entities.

(c) Nothing in this section creates an expectation, requirement, or fiduciary duty for the board or the associated community forest trust lands to generate revenue in excess of amounts as provided in subsection (1)(a) of this section. [2011 c 216 § 9.]

79.155.100 Periodic review and update of community forest trust program. By September 1, 2014, and periodically, but at least once every ten years thereafter, the department

ment shall provide to the board a review and update of the community forest trust program. The review must include updates on the performance of the community forest trust statewide and notification of any community forest trust parcels not performing according to their management plan. The department is authorized to, consistent with this chapter, recommend to the board action to divest itself of nonperforming community forest trust parcels using existing policies and mechanisms available to the department and the board. [2011 c 216 § 10.]

79.155.110 Statewide advisory committee. (1) The commissioner may establish and maintain a statewide advisory committee to assist the department in the implementation of this chapter.

(2) If a statewide advisory committee is established, the commissioner shall appoint a balanced representation of interests on the committee, including representatives of state fiduciary trust land beneficiaries, tribal governments, local governments, relevant state agencies, commercial forest landowners, land trusts, and conservation organizations.

(3) The statewide advisory committee shall provide consultation on issues and questions presented by the commissioner and may be dissolved by the commissioner at any time.

(4) Participation on the statewide advisory committee is voluntary and members are not eligible for any form of compensation nor for reimbursement for expenses incurred due to service on the committee. [2011 c 216 § 11.]

79.155.120 Establishing community forest districts/local working forest districts—Technical assistance grants. (1) The commissioner may, if deemed practicable and beneficial by the commissioner, cooperate with interested local governments in establishing community forest districts or local working forest districts that are compatible with the goals identified in this chapter for the community forest trust. Cooperative districts would attempt to voluntarily synchronize the management of community forest trust lands, other public lands, and private lands located within a certain geographic area to further a common set of community goals. If a working forest district encompasses state lands or state forest lands, then their voluntary management to further a common set of community goals must be consistent with the department's fiduciary and other legal obligations to the trust, including the multiple use act in chapter 79.10 RCW.

(2)(a) The department may, in its sole discretion and if it deems sufficient funding to be available, provide technical assistance grants to local communities for the purpose of enabling or furthering the development of community forest management plans consistent with this chapter.

(b) This subsection does not create a private right of action. [2011 c 216 § 12.]

79.155.130 Authority to manage state lands—Authority to develop management procedures. The authorities granted under Title 79 RCW for the management of state lands apply to the community forest trust to the extent consistent with the purposes of chapter 216, Laws of 2011.

[2011 RCW Supp—page 1552]

The department may develop management procedures deemed necessary by the department to implement chapter 216, Laws of 2011. [2011 c 216 § 18.]

Title 79A

PUBLIC RECREATIONAL LANDS

Chapters

- 79A.05 Parks and recreation commission.**
- 79A.25 Recreation and conservation funding board.**
- 79A.30 Washington state horse park.**
- 79A.35 Washington state recreation trails system.**
- 79A.45 Skiing and commercial ski activity.**
- 79A.60 Regulation of recreational vessels.**
- 79A.80 Access to recreational lands.**

Chapter 79A.05 RCW

PARKS AND RECREATION COMMISSION

Sections

- 79A.05.020 Duties of commission.
- 79A.05.065 Park passes—Eligibility.
- 79A.05.070 Further powers—Director of parks and recreation—Salaries.
- 79A.05.160 Police powers vested in commission and employees.
- 79A.05.215 State parks renewal and stewardship account.
- 79A.05.225 Winter recreational facilities—Commission duties—Liability.
- 79A.05.500 through 79A.05.540 Repealed.
- 79A.05.545 Washington conservation corps.
- 79A.05.630 Sale, lease, and disposal of lands within the Seashore Conservation Area—Disposal of certain lands.

79A.05.020 Duties of commission. In addition to whatever other duties may exist in law or be imposed in the future, it is the duty of the commission to:

- (1) Implement integrated pest management practices and regulate pests as required by RCW 17.15.020;
- (2) Take steps necessary to control spartina and purple loosestrife as required by RCW 17.26.020;
- (3) Participate in the implementation of chapter 19.02 RCW;
- (4) Coordinate planning and provide staffing and administrative assistance to the Lewis and Clark trail committee as required by *RCW 27.34.340;
- (5) Administer those portions of chapter 46.10 RCW not dealing with the registration of snowmobiles as required by RCW 46.10.370;
- (6) Consult and participate in the scenic and recreational highway system as required by chapter 47.39 RCW; and
- (7) Develop, prepare, and distribute information relating to marine oil recycling tanks and sewage holding tank pumping stations, in cooperation with other departments, as required by chapter 88.02 RCW.

The commission has the power reasonably necessary to carry out these duties. [2011 c 171 § 114; 1999 c 249 § 301.]

***Reviser's note:** RCW 27.34.340 was repealed by 1999 c 35 § 5. See chapter 35, Laws of 1999 for the Lewis and Clark bicentennial advisory committee.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

79A.05.065 Park passes—Eligibility. (1)(a) The commission shall grant to any person who meets the eligibility requirements specified in this section a senior citizen's pass which shall: (i) Entitle such a person, and members of his or her camping unit, to a fifty percent reduction in the campsite rental fee prescribed by the commission; and (ii) entitle such a person to free admission to any state park.

(b) The commission shall grant a senior citizen's pass to any person who applies for the senior citizen's pass and who meets the following requirements:

(i) The person is at least sixty-two years of age;

(ii) The person is a domiciliary of the state of Washington and meets reasonable residency requirements prescribed by the commission; and

(iii) The person and his or her spouse have a combined income that would qualify the person for a property tax exemption pursuant to RCW 84.36.381. The financial eligibility requirements of this subsection (1)(b)(iii) apply regardless of whether the applicant for a senior citizen's pass owns taxable property or has obtained or applied for such property tax exemption.

(c) Each senior citizen's pass granted pursuant to this section is valid as long as the senior citizen meets the requirements of (b)(ii) of this subsection. A senior citizen meeting the eligibility requirements of this section may make a voluntary donation for the upkeep and maintenance of state parks.

(d) A holder of a senior citizen's pass shall surrender the pass upon request of a commission employee when the employee has reason to believe the holder fails to meet the criteria in (b) of this subsection. The holder shall have the pass returned upon providing proof to the satisfaction of the director that the holder meets the eligibility criteria for obtaining the senior citizen's pass.

(2)(a) Any resident of Washington who is disabled as defined by the social security administration and who receives social security benefits for that disability, or any other benefits for that disability from any other governmental or nongovernmental source, or who is entitled to benefits for permanent disability under *RCW 71A.10.020(3) due to unemployability full time at the minimum wage, or who is legally blind or profoundly deaf, or who has been issued a card, decal, or special license plate for a permanent disability under RCW 46.19.010 shall be entitled to receive, regardless of age and upon making application therefor, a disability pass at no cost to the holder. The pass shall: (i) Entitle such a person, and members of his or her camping unit, to a fifty percent reduction in the campsite rental fee prescribed by the commission; and (ii) entitle such a person to free admission to any state park.

(b) A card, decal, or special license plate issued for a permanent disability under RCW 46.19.010 may serve as a pass for the holder to entitle that person and members of the person's camping unit to a fifty percent reduction in the campsite rental fee prescribed by the commission, and to allow the holder free admission to state parks.

(3) Any resident of Washington who is a veteran and has a service-connected disability of at least thirty percent shall be entitled to receive a lifetime veteran's disability pass at no cost to the holder. The pass shall: (a) Entitle such a person, and members of his or her camping unit, to free use of any campsite within any state park; (b) entitle such a person to

free admission to any state park; and (c) entitle such a person to an exemption from any reservation fees.

(4)(a) Any Washington state resident who provides out-of-home care to a child, as either a licensed foster-family home or a person related to the child, is entitled to a foster home pass.

(b) An applicant for a foster home pass must request a pass in the manner required by the commission. Upon receipt of a properly submitted request, the commission shall verify with the department of social and health services that the applicant qualifies under (a) of this subsection. Once issued, a foster home pass is valid for the period, which may not be less than one year, designated by the commission.

(c) When accompanied by a child receiving out-of-home care from the pass holder, a foster home pass: (i) Entitles such a person, and members of his or her camping unit, to free use of any campsite within any state park; and (ii) entitles such a person to free admission to any state park.

(d) For the purposes of this subsection (4):

(i) "Out-of-home care" means placement in a foster-family home or with a person related to the child under the authority of chapter 13.32A, 13.34, or 74.13 RCW;

(ii) "Foster-family home" has the same meaning as defined in RCW 74.15.020; and

(iii) "Person related to the child" means those persons referred to in RCW 74.15.020(2)(a) (i) through (vi).

(5) All passes issued pursuant to this section are valid at all parks any time during the year. However, the pass is not valid for admission to concessionaire operated facilities.

(6) The commission shall negotiate payment and costs, to allow holders of a foster home pass free access and usage of park campsites, with the following nonoperated, non-state-owned parks: Central Ferry, Chief Timothy, Crow Butte, and Lyons Ferry. The commission shall seek state general fund reimbursement on a biennial basis.

(7) The commission may deny or revoke any Washington state park pass issued under this section for cause, including but not limited to the following:

(a) Residency outside the state of Washington;

(b) Violation of laws or state park rules resulting in eviction from a state park;

(c) Intimidating, obstructing, or assaulting a park employee or park volunteer who is engaged in the performance of official duties;

(d) Fraudulent use of a pass;

(e) Providing false information or documentation in the application for a state parks pass;

(f) Refusing to display or show the pass to park employees when requested; or

(g) Failing to provide current eligibility information upon request by the agency or when eligibility ceases or changes.

(8) This section shall not affect or otherwise impair the power of the commission to continue or discontinue any other programs it has adopted for senior citizens.

(9) The commission may engage in a mutually agreed upon reciprocal or discounted program for all or specific pass programs with other outdoor recreation agencies.

(10) The commission shall adopt those rules as it finds appropriate for the administration of this section. Among other things, the rules shall prescribe a definition of "camping

unit" which will authorize a reasonable number of persons traveling with the person having a pass to stay at the campsite rented by such a person, a minimum Washington residency requirement for applicants for a senior citizen's pass, and an application form to be completed by applicants for a senior citizen's pass. [2011 c 171 § 115; 2010 c 161 § 1163; 2008 c 238 § 1; 2007 c 441 § 1; 1999 c 249 § 305; 1997 c 74 § 1; 1989 c 135 § 1; 1988 c 176 § 909; 1986 c 6 § 1; 1985 c 182 § 1; 1979 ex.s. c 131 § 1; 1977 ex.s. c 330 § 1. Formerly RCW 43.51.055.]

***Reviser's note:** RCW 71A.10.020 was amended by 2011 1st sp.s. c 30 § 3, changing subsection (3) to subsection (4).

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

79A.05.070 Further powers—Director of parks and recreation—Salaries. The commission may:

(1) Make rules and regulations for the proper administration of its duties;

(2) Accept any grants of funds made with or without a matching requirement by the United States, or any agency thereof, for purposes in keeping with the purposes of this chapter; accept gifts, bequests, devises and endowments for purposes in keeping with such purposes; enter into cooperative agreements with and provide for private nonprofit groups to use state park property and facilities to raise money to contribute gifts, grants, and support to the commission for the purposes of this chapter. The commission may assist the nonprofit group in a cooperative effort by providing necessary agency personnel and services, if available. However, none of the moneys raised may inure to the benefit of the nonprofit group, except in furtherance of its purposes to benefit the commission as provided in this chapter. The agency and the private nonprofit group shall agree on the nature of any project to be supported by such gift or grant prior to the use of any agency property or facilities for raising money. Any such gifts may be in the form of recreational facilities developed or built in part or in whole for public use on agency property, provided that the facility is consistent with the purposes of the agency;

(3) Require certification by the commission of all parks and recreation workers employed in state aided or state controlled programs;

(4) Act jointly, when advisable, with the United States, any other state agencies, institutions, departments, boards, or commissions in order to carry out the objectives and responsibilities of this chapter;

(5) Grant franchises and easements for any legitimate purpose on parks or parkways, for such terms and subject to such conditions and considerations as the commission shall specify;

(6) Charge such fees for services, utilities, and use of facilities as the commission shall deem proper;

(7) Enter into agreements whereby individuals or companies may rent undeveloped parks or parkway land for grazing, agricultural, or mineral development purposes upon such

terms and conditions as the commission shall deem proper, for a term not to exceed forty years;

(8) Determine the qualifications of and employ a director of parks and recreation who shall receive a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 and determine the qualifications and salary of and employ such other persons as may be needed to carry out the provisions hereof; and

(9) Without being limited to the powers hereinbefore enumerated, the commission shall have such other powers as in the judgment of a majority of its members are deemed necessary to effectuate the purposes of this chapter: PROVIDED, That the commission shall not have power to supervise directly any local park or recreation district, and no funds shall be made available for such purpose. [2011 c 320 § 24; 2006 c 141 § 1; 2003 c 186 § 1; 1999 c 249 § 307; 1995 c 211 § 3; 1993 c 156 § 1; 1987 c 225 § 3; 1980 c 89 § 2; 1969 c 99 § 1; 1965 c 8 § 43.51.060. Prior: 1961 c 307 § 12; 1955 c 391 § 3; 1947 c 271 § 5; RRS § 10768-4. Formerly RCW 43.51.060.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

Findings—Intent—2011 c 320: See RCW 79A.80.005.

Effective date—2006 c 141: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 9, 2006." [2006 c 141 § 2.]

Findings—Intent—1995 c 211: "The legislature finds that during the past fourteen years, the Washington state parks and recreation commission has endured a steady erosion of general fund operating support, which has caused park closures, staff reductions, and growing backlog of deferred maintenance projects. The legislature also finds that the growth of parks revenue has been constrained by staff limitations and by transfers of that revenue into the general fund.

The legislature intends to reverse the decline in operating support to its state parks, stabilize the system's level of general fund support, and inspire system employees and park visitors to enhance these irreplaceable resources and ensure their continuing availability to current and future state citizens and visitors. To achieve these goals, the legislature intends to dedicate park revenues to park operations, developing and renovating park facilities, undertaking deferred maintenance, and improving park stewardship. The legislature clearly intends that such revenues shall complement, not supplant, future general fund support." [1995 c 211 § 1.]

Additional notes found at www.leg.wa.gov

79A.05.160 Police powers vested in commission and employees. (1) The members of the commission and its designated employees shall be vested with police powers to enforce the laws of this state.

(2) The director may, under the provisions of RCW 7.84.140, enter into an agreement allowing employees of the department of natural resources and the department of fish and wildlife to enforce certain civil infractions created under this title. [2011 c 320 § 15; 1965 c 8 § 43.51.170. Prior: 1921 c 149 § 7; RRS § 10947. Formerly RCW 43.51.170.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

Findings—Intent—2011 c 320: See RCW 79A.80.005.

79A.05.215 State parks renewal and stewardship account. The state parks renewal and stewardship account is created in the state treasury. Except as otherwise provided in this chapter, all receipts from user fees, concessions, leases, donations collected under RCW 46.16A.090(3), and other state park-based activities shall be deposited into the account. The proceeds from the recreation access pass account created

in RCW 79A.80.090 must be used for the purpose of operating and maintaining state parks. Expenditures from the account may be used for operating state parks, developing and renovating park facilities, undertaking deferred maintenance, enhancing park stewardship, and other state park purposes. Expenditures from the account may be made only after appropriation by the legislature. [2011 c 320 § 22; 2010 c 161 § 1164; 2007 c 340 § 2; 1995 c 211 § 7. Formerly RCW 43.51.275.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

Findings—Intent—2011 c 320: See RCW 79A.80.005.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Findings—Intent—Effective date—Severability—1995 c 211: See notes following RCW 79A.05.070.

79A.05.225 Winter recreational facilities—Commission duties—Liability. (1) In addition to its other powers, duties, and functions the commission may:

(a) Plan, construct, and maintain suitable facilities for winter recreational activities on lands administered or acquired by the commission or as authorized on lands administered by other public agencies or private landowners by agreement;

(b) Provide and issue upon payment of the proper fee, under RCW 79A.05.230, 79A.05.240, and 46.61.585, with the assistance of such authorized agents as may be necessary for the convenience of the public, special permits to park in designated winter recreational area parking spaces;

(c) Administer the snow removal operations for all designated winter recreational area parking spaces; and

(d) Compile, publish, and distribute maps indicating such parking spaces, adjacent trails, and areas and facilities suitable for winter recreational activities.

(2) The commission must require the winter recreation program and its services to be self-supported solely through permit fees, gifts, grants, donations, and other revenues dedicated to the winter recreational program account in RCW 79A.05.235 and the snowmobile account in *RCW 46.10.075.

(3) The commission may contract with any public or private agency for the actual conduct of such duties, but shall remain responsible for the proper administration thereof. The commission is not liable for unintentional injuries to users of lands administered for winter recreation purposes under this section or under RCW 46.10.370, whether the lands are administered by the commission, by other public agencies, or by private landowners through agreement with the commission. Nothing in this section prevents the liability of the commission for injuries sustained by a user by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. A road covered with snow and groomed for the purposes of winter recreation consistent with this chapter and chapter 46.10 RCW shall not be presumed to be a known dangerous artificial latent condition for the purposes of this chapter. [2011 c 320 § 25; 2011 c 171 § 116; 1999 c 249 § 1401. Prior: 1990 c 136 § 2; 1990 c 49 § 2; 1982 c 11 § 1; 1975 1st ex.s. c 209 § 1. Formerly RCW 43.51.290.]

Reviser's note: *(1) RCW 46.10.075 was recodified as RCW 46.68.350 pursuant to 2010 c 161 § 1230, effective July 1, 2011.

(2) This section was amended by 2011 c 171 § 116 and by 2011 c 320 § 25, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 320: See note following RCW 79A.80.005.

Findings—Intent—2011 c 320: See RCW 79A.80.005.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

79A.05.500 through 79A.05.540 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79A.05.545 Washington conservation corps. The commission shall cooperate, when appropriate, as a partner in the Washington conservation corps established in chapter 43.220 RCW. [2011 c 20 § 14; 1999 c 249 § 701.]

Findings—Intent—2011 c 20: See note following RCW 43.220.020.

Intent—Application—2011 c 20: See RCW 43.220.905.

Additional notes found at www.leg.wa.gov

79A.05.630 Sale, lease, and disposal of lands within the Seashore Conservation Area—Disposal of certain lands. Lands within the Seashore Conservation Area shall not be sold, leased, or otherwise disposed of, except as provided in this section.

(1) The commission may, under authority granted in RCW 79A.05.175 and 79A.05.180, exchange state park lands in the Seashore Conservation Area for lands of equal value to be managed by the commission consistent with this chapter. Only state park lands lying east of the Seashore Conservation Line, as it is located at the time of exchange, may be so exchanged.

(2) The commission may, under authority granted in RCW 79A.05.178, directly dispose of up to five contiguous acres of real property, without public auction, to resolve trespass, property ownership disputes, and boundary adjustments with adjacent property owners. Real property to be disposed of under this subsection may be disposed of only after appraisal and for at least fair market value, and only if the transaction is in the best interest of the state. All conveyance documents shall be executed by the governor. All proceeds from the disposal of the property shall be paid into the parkland acquisition account and proceeds received pursuant to any sale under this subsection shall be reinvested in real property located inside or within one mile of the Seashore Conservation Area.

(3) The department of natural resources may lease the lands within the Washington State Seashore Conservation Area as well as the accreted lands along the ocean in state ownership for the exploration and production of oil and gas except that oil drilling rigs and equipment shall not be placed on the Seashore Conservation Area or state-owned accreted lands.

Sale of sand from accretions shall be made to supply the needs of cranberry growers for cranberry bogs in the vicinity and shall not be prohibited if found by the commission to be reasonable, and not generally harmful or destructive to the

character of the land. The commission may grant leases and permits for the removal of sands for construction purposes from any lands within the Seashore Conservation Area if found by the commission to be reasonable and not generally harmful or destructive to the character of the land. Net income from such leases shall be deposited in the state parks renewal and stewardship account. [2011 c 184 § 1; 2000 c 11 § 50; (2003 1st sp.s. c 26 § 929 expired June 30, 2005); 1997 c 137 § 4; 1995 c 203 § 1; 1988 c 75 § 18; 1969 ex.s. c 55 § 6; 1967 c 120 § 8. Formerly RCW 43.51.685.]

Expiration date—Severability—Effective dates—2003 1st sp.s. c 26: See notes following RCW 43.135.045.

Additional notes found at www.leg.wa.gov

Chapter 79A.25 RCW

RECREATION AND CONSERVATION FUNDING BOARD

Sections

- 79A.25.220 Repealed.
 79A.25.310 Washington invasive species council—Created.
 79A.25.370 Washington invasive species council—Invasive species council account. (*Expires June 30, 2017.*)
 79A.25.830 Gifts, grants, or endowments. (*Effective January 1, 2012, contingent expiration date.*)

79A.25.220 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79A.25.310 Washington invasive species council—Created. (1) There is created the Washington invasive species council to exist until June 30, 2017. Staff support to the council shall be provided by the recreation and conservation office and from the agencies represented on the council. For administrative purposes, the council shall be located within the office.

(2) The purpose of the council is to provide policy level direction, planning, and coordination for combating harmful invasive species throughout the state and preventing the introduction of others that may be potentially harmful.

(3) The council is a joint effort between local, tribal, state, and federal governments, as well as the private sector and nongovernmental interests. The purpose of the council is to foster cooperation, communication, and coordinated approaches that support local, state, and regional initiatives for the prevention and control of invasive species.

(4) For the purposes of this chapter, "invasive species" include nonnative organisms that cause economic or environmental harm and are capable of spreading to new areas of the state. "Invasive species" does not include domestic livestock, intentionally planted agronomic crops, or nonharmful exotic organisms. [2011 c 154 § 2; 2007 c 241 § 61; 2006 c 152 § 2.]

Findings—2011 c 154: "The land, water, and other resources of Washington state are being severely impacted by the invasion of an increasing number of harmful invasive plant and animal species. These impacts are resulting in damage to the state's environment and causing economic hardships. The multitude of public and private organizations with an interest and authority in controlling and preventing the spread of harmful invasive species in Washington state need a mechanism for cooperation, communication, collaboration, and implementation of the statewide plan of action to combat these threats." [2011 c 154 § 1.]

[2011 RCW Supp—page 1556]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.25.370 Washington invasive species council— Invasive species council account. (*Expires June 30, 2017.*)

(1) The invasive species council account is created in the custody of the state treasurer. All receipts from appropriations, gifts, grants, and donations must be deposited into the account. Expenditures from the account may be used only to carry out the purposes of the council. The account is subject to allotment procedures under chapter 43.88 RCW and the approval of the director of the recreation and conservation office is required for expenditures. All expenditures must be directed by the council.

(2) This section expires June 30, 2017. [2011 c 154 § 3; 2007 c 241 § 62; 2006 c 152 § 8.]

Findings—2011 c 154: See note following RCW 79A.25.310.

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.25.830 Gifts, grants, or endowments. (*Effective January 1, 2012, contingent expiration date.*) The recreation and conservation funding board or office may receive gifts, grants, or endowments from public and private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of RCW 79A.25.800 through 79A.25.830 and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW 42.17A.560. [2011 c 60 § 48; 2007 c 241 § 60; 2000 c 11 § 82; 1998 c 264 § 4. Formerly RCW 43.99.830.]

Contingent expiration date—2011 c 60 § 48: "Section 82, chapter 11, Laws of 2000; section 60, chapter 241, Laws of 2007; and section 48, chapter 60, Laws of 2011 expire one year after RCW 82.14.0494 expires." [2011 c 60 § 52.]

Effective date—2011 c 60: See RCW 42.17A.919.

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Additional notes found at www.leg.wa.gov

Chapter 79A.30 RCW

WASHINGTON STATE HORSE PARK

Sections

- 79A.30.030 Washington state horse park authority—Formation—Powers—Articles of incorporation—Board.

79A.30.030 Washington state horse park authority— Formation—Powers—Articles of incorporation—Board.

(1) A nonprofit corporation may be formed under the nonprofit corporation provisions of chapter 24.03 RCW to carry out the purposes of this chapter. Except as provided in RCW 79A.30.040, the corporation shall have all the powers and be subject to the same restrictions as are permitted or prescribed to nonprofit corporations and shall exercise those powers only for carrying out the purposes of this chapter and those purposes necessarily implied therefrom. The nonprofit corporation shall be known as the Washington state horse park authority. The articles of incorporation shall provide that it is the responsibility of the authority to develop, promote, operate, manage, and maintain the Washington state horse park.

The articles of incorporation shall provide for appointment of directors and other conduct of business consistent with the requirements of this chapter.

(2)(a) The articles of incorporation shall provide for a seven-member board of directors for the authority, all appointed by the commission. Board members shall serve three-year terms, except that two of the original appointees shall serve one-year terms, and two of the original appointees shall serve two-year terms. A board member may serve consecutive terms.

(b) The articles of incorporation shall provide that the commission appoint board members as follows:

(i) One board member shall represent the interests of the commission;

(ii) One board member shall represent the interests of the county in which the park is located. In making this appointment, the commission shall solicit recommendations from the county legislative authority; and

(iii) Five board members shall represent the geographic and sports discipline diversity of equestrian interests in the state, and at least one of these members shall have business experience relevant to the organization of horse shows or operation of a horse show facility. In making these appointments, the commission shall solicit recommendations from a variety of active horse-related organizations in the state.

(3) The articles of incorporation shall include a policy that provides for the preferential use of a specific area of the horse park facilities at nominal cost for horse groups associated with youth groups and individuals with disabilities.

(4) The commission shall make appointments to fill board vacancies for positions authorized under subsection (2) of this section, upon additional solicitation of recommendations from the board of directors.

(5) The board of directors shall perform their duties in the best interests of the authority, consistent with the standards applicable to directors of nonprofit corporations under RCW 24.03.127. [2011 1st sp.s. c 21 § 32; 2000 c 11 § 85; 1995 c 200 § 4. Formerly RCW 67.18.030.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Chapter 79A.35 RCW

WASHINGTON STATE RECREATION TRAILS SYSTEM

Sections

79A.35.130 Participants in conservation corps programs—Exempt from provisions related to rates of compensation.

79A.35.130 Participants in conservation corps programs—Exempt from provisions related to rates of compensation. Participants in conservation corps programs offered by a nonprofit organization affiliated with a national service organization established under the authority of the national and community service trust act of 1993, P.L. 103-82, are exempt from provisions related to rates of compensation while performing environmental and trail maintenance work provided:

(1) The nonprofit organization must be registered as a nonprofit corporation pursuant to chapter 24.03 RCW;

(2) The nonprofit organization's management and administrative headquarters must be located in Washington;

(3) Participants in the program spend at least fifteen percent of their time in the program on education and training activities; and

(4) Participants in the program receive a stipend or living allowance as authorized by federal or state law.

Participants are exempt from provisions related to rates of compensation only for environmental and trail maintenance work conducted pursuant to the conservation corps program. [2011 c 56 § 1.]

Chapter 79A.45 RCW

SKIING AND COMMERCIAL SKI ACTIVITY

Sections

79A.45.070 Skiing in an area or trail closed to the public—Penalty.

79A.45.070 Skiing in an area or trail closed to the public—Penalty. A person is guilty of a misdemeanor if the person knowingly skis in an area or on a ski trail, owned or controlled by a ski area operator, that is closed to the public and that has signs posted indicating the closure. [2011 c 276 § 1.]

Chapter 79A.60 RCW

REGULATION OF RECREATIONAL VESSELS

Sections

79A.60.485 Vessels carrying passengers for hire on whitewater rivers—Rules to implement RCW 79A.60.480—Fees.

79A.60.510 Findings—Sewage disposal initiative established—Boater environmental education—Waterway access facilities.

79A.60.630 Boating safety education—Commission's duties—Fee—Report to the legislature.

79A.60.670 Boating activities program—Boating activities advisory committee—Adoption of rules.

79A.60.485 Vessels carrying passengers for hire on whitewater rivers—Rules to implement RCW 79A.60.480—Fees. The department of licensing may adopt and enforce such rules, including the setting of fees, as may be consistent with and necessary to implement RCW 79A.60.480. The fees must approximate the cost of administration. The fees must be deposited in the business and professions account created in RCW 43.24.150. [2011 c 298 § 35; 2000 c 11 § 110; 1997 c 391 § 9. Formerly RCW 88.12.276.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

79A.60.510 Findings—Sewage disposal initiative established—Boater environmental education—Waterway access facilities. The legislature finds that the waters of Washington state provide a unique and valuable recreational resource to large and growing numbers of boaters. Proper stewardship of, and respect for, these waters requires that, while enjoying them for their scenic and recreational benefits, boaters must exercise care to assure that such activities do not contribute to the despoliation of these waters, and that watercraft be operated in a safe and responsible manner. The legislature has specifically addressed the topic of access to

clean and safe waterways by requiring the 1987 boating safety study and by establishing the Puget Sound partnership.

The legislature finds that there is a need to educate Washington's boating community about safe and responsible actions on our waters and to increase the level and visibility of the enforcement of boating laws. To address the incidence of fatalities and injuries due to recreational boating on our state's waters, local and state efforts directed towards safe boating must be stimulated. To provide for safe waterways and public enjoyment, portions of the watercraft excise tax and boat registration fees should be made available for boating safety and other boating recreation purposes.

In recognition of the need for clean waterways, and in keeping with the Puget Sound partnership's water quality work plan, the legislature finds that adequate opportunities for responsible disposal of boat sewage must be made available. There is hereby established a five-year initiative to install sewage pumpout or sewage dump stations at appropriate marinas.

To assure the use of these sewage facilities, a boater environmental education program must accompany the five-year initiative and continue to educate boaters about boat wastes and aquatic resources.

The legislature also finds that, in light of the increasing numbers of boaters utilizing state waterways, a program to acquire and develop sufficient waterway access facilities for boaters must be undertaken.

To support boating safety, environmental protection and education, and public access to our waterways, the legislature declares that a portion of the income from boating-related activities, as specified in RCW 82.49.030 and 88.02.650, should support these efforts. [2011 c 171 § 117; 2007 c 341 § 57; 1999 c 249 § 1506; 1989 c 393 § 1. Formerly RCW 88.12.295, 88.12.360, and 88.36.010.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Additional notes found at www.leg.wa.gov

79A.60.630 Boating safety education—Commission's duties—Fee—Report to the legislature. (1) The commission shall establish and implement by rule a program to provide required boating safety education. The boating safety education program shall include training on preventing the spread of aquatic invasive species. The program shall be phased in so that all boaters not exempted under RCW 79A.60.640(3) are required to obtain a boater education card by January 1, 2016. To obtain a boater education card, a boater shall provide a certificate of accomplishment issued by a boating educator for taking and passing an accredited boating safety education course, or pass an equivalency exam, or provide proof of completion of a course that meets the standard adopted by the commission.

(2) As part of the boating safety education program, the commission shall:

(a) Establish a program to be phased over eleven years starting July 1, 2005, with full implementation by January 1, 2016. The period July 1, 2005, through December 31, 2007, will be program development, boater notification of the new requirements for mandatory education, and processing cards

to be issued to individuals having taken an accredited course prior to January 1, 2008. The schedule for phase-in of the mandatory education requirement by age group is as follows: January 1, 2008 - All boat operators twenty years old and younger;

January 1, 2009 - All boat operators twenty-five years old and younger;

January 1, 2010 - All boat operators thirty years old and younger;

January 1, 2011 - All boat operators thirty-five years old and younger;

January 1, 2012 - All boat operators forty years old and younger;

January 1, 2013 - All boat operators fifty years old and younger;

January 1, 2014 - All boat operators sixty years old and younger;

January 1, 2015 - All boat operators seventy years old and younger;

January 1, 2016 - All boat operators;

(b) Establish a minimum standard of boating safety education accomplishment. The standard must be consistent with the applicable standard established by the national association of state boating law administrators;

(c) Adopt minimum standards for boating safety education course of instruction and examination that ensures compliance with the national association of state boating law administrators minimum standards;

(d) Approve and provide accreditation to boating safety education courses operated by volunteers, or commercial or nonprofit organizations, including, but not limited to, courses given by the United States coast guard auxiliary and the United States power squadrons;

(e) Develop an equivalency examination that may be taken as an alternative to the boating safety education course;

(f) Establish a fee of ten dollars for the boater education card to fund all commission activities related to the boating safety education program created by chapter 392, Laws of 2005, including the initial costs of developing the program. Any surplus funds resulting from the fees received shall be distributed by the commission as grants to local marine law enforcement programs approved by the commission as provided in RCW 88.02.650;

(g) Establish a fee for the replacement of the boater education card that covers the cost of replacement;

(h) Consider and evaluate public agency and commercial opportunities to assist in program administration with the intent to keep administrative costs to a minimum;

(i) Approve and provide accreditation to boating safety education courses offered online; and

(j) Provide a report to the legislature by January 1, 2008, on its progress of implementation of the mandatory education program. [2011 c 171 § 118; 2005 c 392 § 3.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Intent—2005 c 392: "It is the intent of the legislature to establish a boating safety education program that contributes to the reduction of accidents and increases the enjoyment of boating by all operators of all recreational vessels on the waters of this state. Based on the 2003 report to the legislature titled "Recreational Boating Safety in Washington, A Report on Methods to Achieve Safer Boating Practices," the legislature recognizes that boating accidents also occur in nonmotorized vessels in this state, but, at this

time there is no national educational standard for nonmotorized vessels. Therefore, the commission is hereby authorized and directed to work with agencies and organizations representing nonmotorized vessel activities and individuals operating nonmotorized vessels to decrease accidents of operators in these vessels. It is also the intent of the legislature to encourage boating safety education programs that use volunteer and private sector efforts to enhance boating safety and education for operators of nonmotorized vessels to work closely with the state parks and recreation commission in its efforts to reduce all boating accidents in this state." [2005 c 392 § 1.]

79A.60.670 Boating activities program—Boating activities advisory committee—Adoption of rules. (1) The boating activities program is created in the recreation and conservation funding board.

(2) The recreation and conservation funding board shall distribute moneys appropriated from the boating activities account created in RCW 79A.60.690 as follows, or as otherwise appropriated by the legislature, after deduction for the board's expenses in administering the boating activities program and for related studies:

(a) To the commission for boater safety, boater education, boating-related law enforcement activities, activities included in RCW 88.02.650, related administrative expenses, and boating-related environmental programs, such as pumpout stations, to enhance clean waters for boating;

(b) For grants to state agencies, counties, municipalities, port districts, federal agencies, nonprofit organizations, and Indian tribes to improve boating access to water and marine parks, enhance the boater experience, boater safety, boater education, and boating-related law enforcement activities, and to provide funds for boating-related environmental programs, such as pumpout stations, to enhance clean waters for boating; and

(c) If the amount available for distribution from the boating activities account is equal to or less than two million five hundred thousand dollars per fiscal year, then eighty percent of the amount available must be distributed to the commission for the purposes of (a) of this subsection and twenty percent for grants in (b) of this subsection. Amounts available for distribution in excess of two million five hundred thousand dollars per fiscal year shall be distributed by the board for purposes of (a) and (b) of this subsection.

(3) The recreation and conservation funding board shall establish an application process for boating activities grants.

(4) Agencies receiving grants for capital purposes from the boating activities account shall consider the possibility of contracting with the commission, the department of natural resources, or other federal, state, and local agencies to employ the youth development and conservation corps or other youth crews in completing the project.

(5) To solicit input on the boating activities grant application process, criteria for grant awards, and use of grant moneys, and to determine the interests of the boating community, the recreation and conservation funding board shall solicit input from a boating activities advisory committee. The recreation and conservation funding board may utilize a currently established boating issues committee that has similar responsibility for input on recreational boating-related funding issues. Members of the boating activities advisory committee are not eligible for compensation but may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) The recreation and conservation funding board may adopt rules to implement this section. [2011 c 171 § 119; 2007 c 311 § 2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Chapter 79A.80 RCW

ACCESS TO RECREATIONAL LANDS

Sections

79A.80.005	Findings—Intent—2011 c 320.
79A.80.010	Definitions.
79A.80.020	Discover pass.
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79A.80.040	Vehicle access pass.
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79A.80.060	Sno-park seasonal permit.
79A.80.070	Short-term parking.
79A.80.080	Pass/permit requirements—Penalty.
79A.80.090	Recreation access pass account.

79A.80.005 Findings—Intent—2011 c 320. (1) The legislature finds that there is an increasing demand for outdoor recreation opportunities and conservation measures on lands managed by the department of fish and wildlife, the department of natural resources, and the parks and recreation commission. Development and maintenance of outdoor recreation facilities and conservation of lands have not kept pace with this demand. This demand, combined with shrinking resources for management, has led to the degradation of our lands to the detriment of the recreating public and efforts to conserve our natural resources.

(2) The legislature further finds that the recreating public cannot readily discern which agency of the state is responsible for the management of particular state lands or which policies apply to those lands.

(3) It is the intent of this act to reform and improve access to and management of state lands on a sustainable basis for the recreating public by: Providing a motor vehicle access pass and access policies for state lands; recovering the cost incurred by the state for operations and management of recreation opportunities; providing resources to address the growing demand and impacts of outdoor recreationists and conservation of our natural resources; and providing effective education and enforcement of state land access policies. [2011 c 320 § 1.]

Effective date—2011 c 320: "Except for section 12 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 c 320 § 29.]

79A.80.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" or "agencies" means the department of fish and wildlife, the department of natural resources, and the parks and recreation commission.

(2) "Annual natural investment permit" means the annual permit issued by the parks and recreation commission for the purpose of launching boats from the designated state parks boat launch sites.

(3) "Camper registration" means proof of payment of a camping fee on recreational lands managed by the parks and recreation commission.

(4) "Day-use permit" means the permit created in RCW 79A.80.030.

(5) "Discover pass" means the annual pass created in RCW 79A.80.020.

(6) "Motor vehicle" has the same meaning as defined in RCW 46.04.320 and which are required to be registered under chapter 46.16A RCW. "Motor vehicle" does not include those motor vehicles exempt from registration under RCW 46.16A.080 and state and publicly owned motor vehicles as provided in RCW 46.16A.170.

(7) "Recreation site or lands" means a state park or fish and wildlife conservation sites including water access areas, boat ramps, wildlife areas, parking areas, roads, and trailheads, or department of natural resources developed or designated recreation areas, sites, trailheads, and parking areas.

(8) "Sno-park seasonal permit" means the seasonal permit issued by the parks and recreation commission for providing access to winter recreational facilities for the period of November 1st through March 31st.

(9) "Vehicle access pass" means the pass created in RCW 79A.80.040. [2011 c 320 § 2.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

79A.80.020 Discover pass. (1) A discover pass is required for any motor vehicle to park or operate on any recreation site or lands, except for short-term parking as may be authorized under RCW 79A.80.070.

(2) The cost of the discover pass is thirty dollars per motor vehicle. Every four years the office of financial management must review the cost of the discover pass and, if necessary, recommend to the legislature an adjustment to the cost of the discover pass to account for inflation.

(3) The discover pass is valid for one year from the date of issuance.

(4) The discover pass must be made available for purchase throughout the year through the department of fish and wildlife's automated licensing system consistent with RCW 77.32.050.

(5) The discover pass must be made available for purchase through the department of licensing as provided in RCW 46.16A.090. The department of licensing, county auditor, or other agent or subagent appointed by the director, is not responsible for delivering a purchased discover pass to a motor vehicle owner. The agencies must deliver the purchased discover pass to a motor vehicle owner.

(6) The state parks and recreation commission may make the discover pass available for purchase through its reservation system and other outlets authorized by law to sell licenses, permits, or passes.

(7) The discover pass must contain space for the motor vehicle license plate number.

(8) A complimentary discover pass must be provided to a volunteer who performed twenty-four hours of service on agency-sanctioned volunteer projects in a year. The agency must provide vouchers to volunteers identifying the number of volunteer hours they have provided for each project. The

vouchers may be brought to an agency to be redeemed for a discover pass. [2011 c 320 § 3.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

79A.80.030 Day-use permit. (1) A person may purchase a day-use permit to meet the requirements of RCW 79A.80.080. The day-use permit is ten dollars per day and must be available for purchase from each agency. The day-use permit is valid for one calendar day.

(2) The agencies may provide short-term parking under RCW 79A.80.070 where the day-use permit is not required.

(3) Every four years the office of financial management must review the cost of the day-use permit and, if necessary, recommend to the legislature an adjustment to the cost of the day-use permit to account for inflation. [2011 c 320 § 4.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

79A.80.040 Vehicle access pass. (1) The vehicle access pass is created solely for access to the department of fish and wildlife recreation sites or lands. The vehicle access pass is only available to a person who purchases a current valid: Big game hunting license issued under RCW 77.32.450; small game hunting license issued under RCW 77.32.460; western Washington pheasant permit issued under RCW 77.32.575; trapping license issued under RCW 77.65.450; watchable wildlife decal issued under RCW 77.32.560; or combination, saltwater, or freshwater personal use fishing license issued under RCW 77.32.470.

(2) One vehicle access pass must be issued per purchase pursuant to subsection (1) of this section.

(3) The vehicle access pass is valid for the license year of the license it is purchased with. [2011 c 320 § 5.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

79A.80.050 Valid camper registration/annual natural investment permit—Commission may provide free entry to state parks. (1) The discover pass or the day-use permit are not required for persons who have a valid camper registration, or annual natural investment permit, issued by the state parks and recreation commission.

(2) The state parks and recreation commission may provide up to twelve days a year where entry to the state parks is free. At least three of those days must be on weekends. [2011 c 320 § 6.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

79A.80.060 Sno-park seasonal permit. The discover pass or the day-use permit are not required, for persons who have a valid sno-park seasonal permit issued by the state parks and recreation commission, at designated sno-parks between November 1st through March 31st. [2011 c 320 § 7.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

79A.80.070 Short-term parking. Each agency, where applicable, must designate short-term parking not to exceed thirty minutes where the discover pass or day-use permit are not required at recreation sites or lands. [2011 c 320 § 8.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

79A.80.080 Pass/permit requirements—Penalty. (1)

The discover pass, the vehicle access pass, or the day-use permit must be visibly displayed in the front windshield of any motor vehicle:

- (a) Operating on a recreation site or lands; or
- (b) Parking at a recreation site or lands.

(2) The discover pass, the vehicle access pass, or the day-use permit is not required on private lands, state-owned aquatic lands other than water access areas, or at agency offices, hatcheries, or other facilities where public business is conducted.

(3)(a) The discover pass, the vehicle access pass, or the day-use permit is not required for persons who use, possess, or enter lands owned or managed by the agencies for purposes consistent with a written authorization from the agency, including but not limited to leases, contracts, and easements.

(b) The discover pass or the day-use permit is not required on department of fish and wildlife lands for persons possessing a current vehicle access pass pursuant to RCW 79A.80.040.

(4) Failure to comply with subsection (1) of this section is a natural resource infraction under chapter 7.84 RCW. An agency is authorized to issue a notice of infraction to any person who fails to comply with subsection (1)(a) of this section or to any motor vehicle that fails to comply with subsection (1)(b) of this section.

(5) The penalty for failure to comply with the requirements of this section is ninety-nine dollars. This penalty is reduced to fifty-nine dollars if an individual provides proof of purchase of the discover pass to the court within fifteen days after the issuance of the notice of violation. [2011 c 320 § 9.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

79A.80.090 Recreation access pass account. (1) The recreation access pass account is created in the state treasury. All moneys received from the sale of discover passes and day-use permits must be deposited into the account.

(2) Each fiscal biennium, the first seventy-one million dollars in revenue must be distributed to the agencies in the following manner:

(a) Eight percent to the department of fish and wildlife and deposited into the state wildlife account created in RCW 77.12.170;

(b) Eight percent to the department of natural resources and deposited into the park land trust revolving fund created in RCW 43.30.385; and

(c) Eighty-four percent to the state parks and recreation commission and deposited into the state parks renewal and stewardship account created in RCW 79A.05.215.

(3) Each fiscal biennium, revenues in excess of seventy-one million dollars must be distributed equally among the agencies to the accounts identified in subsection (2) of this section. [2011 c 320 § 10.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

Title 80**PUBLIC UTILITIES****Chapters**

- 80.04 Regulations—General.**
- 80.28 Gas, electrical, and water companies.**
- 80.36 Telecommunications.**
- 80.50 Energy facilities—Site locations.**
- 80.70 Carbon dioxide mitigation.**
- 80.80 Greenhouse gas emissions—Baseload electric generation performance standard.**
- 80.82 Closure of coal-fired electric generation facilities.**

Chapter 80.04 RCW**REGULATIONS—GENERAL**

Sections

- 80.04.010 Definitions. *(Effective until July 1, 2012.)*
- 80.04.010 Definitions. *(Effective July 1, 2012.)*
- 80.04.110 Complaints—Hearings—Water systems not meeting board of health standards—Drinking water standards—Nonmunicipal water systems audits. *(Effective July 1, 2012.)*
- 80.04.160 Rules and regulations. *(Effective July 1, 2012.)*
- 80.04.250 Valuation of public service property. *(Effective July 1, 2012.)*
- 80.04.500 Application to municipal utilities. *(Effective July 1, 2012.)*
- 80.04.560 Finding.
- 80.04.570 Power purchase agreement for acquisition of coal transition power. *(Expires December 31, 2025.)*
- 80.04.580 Regulatory fee on wastewater companies regulated by the commission—Rule-making authority. *(Effective July 1, 2012.)*

80.04.010 Definitions. *(Effective until July 1, 2012.)*

As used in this title, unless specifically defined otherwise or unless the context indicates otherwise:

"Automatic location identification" means a system by which information about a caller's location, including the seven-digit number or ten-digit number used to place a 911 call or a different seven-digit number or ten-digit number to which a return call can be made from the public switched network, is forwarded to a public safety answering point for display.

"Automatic number identification" means a system that allows for the automatic display of the seven-digit or ten-digit number used to place a 911 call.

"Battery charging facility" includes a "battery charging station" and a "rapid charging station" as defined in RCW 82.08.816.

"Commission" means the utilities and transportation commission.

"Commissioner" means one of the members of such commission.

"Competitive telecommunications company" means a telecommunications company which has been classified as such by the commission pursuant to RCW 80.36.320.

"Competitive telecommunications service" means a service which has been classified as such by the commission pursuant to RCW 80.36.330.

"Corporation" includes a corporation, company, association or joint stock association.

"Person" includes an individual, a firm or partnership.

"Gas plant" includes all real estate, fixtures and personal property, owned, leased, controlled, used or to be used for or in connection with the transmission, distribution, sale or fur-

nishing of natural gas, or the manufacture, transmission, distribution, sale or furnishing of other type gas, for light, heat or power.

"Gas company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

"Electric plant" includes all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

"Electrical company" includes any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others), and every city or town owning, operating or managing any electric plant for hire within this state. "Electrical company" does not include a company or person employing a cogeneration facility solely for the generation of electricity for its own use or the use of its tenants or for sale to an electrical company, state or local public agency, municipal corporation, or quasi municipal corporation engaged in the sale or distribution of electrical energy, but not for sale to others, unless such company or person is otherwise an electrical company.

"LATA" means a local access transport area as defined by the commission in conformance with applicable federal law.

"Private telecommunications system" means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. "Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

"Private shared telecommunications services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises in building complexes, campuses, or high-rise buildings, by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to interexchange telecommunications companies.

"Private switch automatic location identification service" means a service that enables automatic location identification to be provided to a public safety answering point for 911 calls originating from station lines served by a private switch system.

"Radio communications service company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers

appointed by any court, and every city or town making available facilities to provide radio communications service, radio paging, or cellular communications service for hire, sale, or resale.

"Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

"Noncompetitive telecommunications service" means any service which has not been classified as competitive by the commission.

"Facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service.

"Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

"Water system" includes all real estate, easements, fixtures, personal property, dams, dikes, head gates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire.

"Water company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating, or managing any water system for hire within this state: PROVIDED, That for purposes of commission jurisdiction it shall not include any water system serving less than one hundred customers where the average annual gross revenue per customer does not exceed three hundred dollars per year, which revenue figure may be increased annually by the commission by rule adopted pursuant to chapter 34.05 RCW to reflect the rate of inflation as determined by the implicit price deflator of the United States department of commerce: AND PROVIDED FURTHER, That such measurement of customers or revenues shall include all portions of water companies having common ownership or control, regardless of location or corporate designation. "Control" as used herein shall be defined by the commission by rule and shall not include management by a satellite agency as defined in chapter 70.116 RCW if the satellite agency is not an owner of the water company. "Water company" also includes, for auditing purposes only, nonmunicipal water systems which are referred to the commission pursuant to an administrative order from the department, or the city or county as provided in RCW 80.04.110. However, water companies exempt from commission regulation shall be subject to the provisions of

chapter 19.86 RCW. A water company cannot be removed from regulation except with the approval of the commission. Water companies subject to regulation may petition the commission for removal from regulation if the number of customers falls below one hundred or the average annual revenue per customer falls below three hundred dollars. The commission is authorized to maintain continued regulation if it finds that the public interest so requires.

"Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of the sequential generation of electrical or mechanical power and useful heat from the same primary energy source or fuel.

"Public service company" includes every gas company, electrical company, telecommunications company, and water company. Ownership or operation of a cogeneration facility does not, by itself, make a company or person a public service company.

"Local exchange company" means a telecommunications company providing local exchange telecommunications service.

"Department" means the department of health.

The term "service" is used in this title in its broadest and most inclusive sense. [2011 c 28 § 1; 1995 c 243 § 2; 1991 c 100 § 1; 1989 c 101 § 2; 1987 c 229 § 1. Prior: 1985 c 450 § 2; 1985 c 167 § 1; 1985 c 161 § 1; 1979 ex.s. c 191 § 10; 1977 ex.s. c 47 § 1; 1963 c 59 § 1; 1961 c 14 § 80.04.010; prior: 1955 c 316 § 2; prior: 1929 c 223 § 1, part; 1923 c 116 § 1, part; 1911 c 117 § 8, part; RRS § 10344, part.]

Findings—Severability—1995 c 243: See notes following RCW 80.36.555.

Additional notes found at www.leg.wa.gov

80.04.010 Definitions. (Effective July 1, 2012.) As used in this title, unless specifically defined otherwise or unless the context indicates otherwise:

(1) "Automatic location identification" means a system by which information about a caller's location, including the seven-digit number or ten-digit number used to place a 911 call or a different seven-digit number or ten-digit number to which a return call can be made from the public switched network, is forwarded to a public safety answering point for display.

(2) "Automatic number identification" means a system that allows for the automatic display of the seven-digit or ten-digit number used to place a 911 call.

(3) "Battery charging facility" includes a "battery charging station" and a "rapid charging station" as defined in RCW 82.08.816.

(4) "Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of the sequential generation of electrical or mechanical power and useful heat from the same primary energy source or fuel.

(5) "Commission" means the utilities and transportation commission.

(6) "Commissioner" means one of the members of such commission.

(7) "Competitive telecommunications company" means a telecommunications company which has been classified as such by the commission pursuant to RCW 80.36.320.

(8) "Competitive telecommunications service" means a service which has been classified as such by the commission pursuant to RCW 80.36.330.

(9) "Corporation" includes a corporation, company, association or joint stock association.

(10) "Department" means the department of health.

(11) "Electric plant" includes all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

(12) "Electrical company" includes any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others), and every city or town owning, operating or managing any electric plant for hire within this state. "Electrical company" does not include a company or person employing a cogeneration facility solely for the generation of electricity for its own use or the use of its tenants or for sale to an electrical company, state or local public agency, municipal corporation, or quasi municipal corporation engaged in the sale or distribution of electrical energy, but not for sale to others, unless such company or person is otherwise an electrical company.

(13) "Facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service.

(14) "Gas company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

(15) "Gas plant" includes all real estate, fixtures and personal property, owned, leased, controlled, used or to be used for or in connection with the transmission, distribution, sale or furnishing of natural gas, or the manufacture, transmission, distribution, sale or furnishing of other type gas, for light, heat or power.

(16) "LATA" means a local access transport area as defined by the commission in conformance with applicable federal law.

(17) "Local exchange company" means a telecommunications company providing local exchange telecommunications service.

(18) "Noncompetitive telecommunications service" means any service which has not been classified as competitive by the commission.

(19) "Person" includes an individual, a firm or partnership.

(20) "Private shared telecommunications services" includes the provision of telecommunications and informa-

tion management services and equipment within a user group located in discrete private premises in building complexes, campuses, or high-rise buildings, by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to interexchange telecommunications companies.

(21) "Private switch automatic location identification service" means a service that enables automatic location identification to be provided to a public safety answering point for 911 calls originating from station lines served by a private switch system.

(22) "Private telecommunications system" means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. "Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

(23) "Public service company" includes every gas company, electrical company, telecommunications company, wastewater company, and water company. Ownership or operation of a cogeneration facility does not, by itself, make a company or person a public service company.

(24) "Radio communications service company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide radio communications service, radio paging, or cellular communications service for hire, sale, or resale.

(25) "Service" is used in this title in its broadest and most inclusive sense.

(26) "System of sewerage" means collection, treatment, and disposal facilities and services for sewerage, or storm or surface water run-off.

(27) "Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

(28) "Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

(29)(a) "Wastewater company" means a corporation, company, association, joint stock association, partnership and person, their lessees, trustees, or receivers that owns or proposes to develop and own a system of sewerage that is designed for a peak flow of twenty-seven thousand to one hundred thousand gallons per day if treatment is by a large on-site sewerage system, or to serve one hundred or more customers.

(b) For purposes of commission jurisdiction, wastewater company does not include: (i) Municipal, county, or other

publicly owned systems of sewerage; or (ii) wastewater company service to customers outside of an urban growth area as defined in RCW 36.70A.030.

(30)(a) "Water company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating, or managing any water system for hire within this state.

(b) For purposes of commission jurisdiction, "water company" does not include any water system serving less than one hundred customers where the average annual gross revenue per customer does not exceed three hundred dollars per year, which revenue figure may be increased annually by the commission by rule adopted pursuant to chapter 34.05 RCW to reflect the rate of inflation as determined by the implicit price deflator of the United States department of commerce. The measurement of customers or revenues must include all portions of water companies having common ownership or control, regardless of location or corporate designation.

(c) "Control" is defined by the commission by rule and does not include management by a satellite agency as defined in chapter 70.116 RCW if the satellite agency is not an owner of the water company.

(d) "Water company" also includes, for auditing purposes only, nonmunicipal water systems which are referred to the commission pursuant to an administrative order from the department, or the city or county as provided in RCW 80.04.110.

(e) Water companies exempt from commission regulation are subject to the provisions of chapter 19.86 RCW. A water company cannot be removed from regulation except with the approval of the commission. Water companies subject to regulation may petition the commission for removal from regulation if the number of customers falls below one hundred or the average annual revenue per customer falls below three hundred dollars. The commission is authorized to maintain continued regulation if it finds that the public interest so requires.

(31) "Water system" includes all real estate, easements, fixtures, personal property, dams, dikes, head gates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire. [2011 c 214 § 2; 2011 c 28 § 1; 1995 c 243 § 2; 1991 c 100 § 1; 1989 c 101 § 2; 1987 c 229 § 1. Prior: 1985 c 450 § 2; 1985 c 167 § 1; 1985 c 161 § 1; 1979 ex.s. c 191 § 10; 1977 ex.s. c 47 § 1; 1963 c 59 § 1; 1961 c 14 § 80.04.010; prior: 1955 c 316 § 2; prior: 1929 c 223 § 1, part; 1923 c 116 § 1, part; 1911 c 117 § 8, part; RRS § 10344, part.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2011 c 28 § 1 and by 2011 c 214 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Purpose—2011 c 214: "The legislature recognizes the critical importance of infrastructure to the development of industrial, commer-

cial, and residential properties and finds that infill development is often limited by the lack of infrastructure. The legislature further finds that in many areas, public funding to extend infrastructure is not available. It is the purpose of this act to allow private utilities to provide infrastructure needed for economic development in a manner that minimizes development sprawl." [2011 c 214 § 1.]

Limitation of chapter—2011 c 214: "Nothing in this act supersedes federal, state, or local government requirements to obtain a wastewater discharge permit or a large on-site sewerage system operating permit or other permits or licenses required by law in the state of Washington." [2011 c 214 § 30.]

Effective date—2011 c 214: "Except for section 29 of this act, this act takes effect July 1, 2012." [2011 c 214 § 32.]

Findings—Severability—1995 c 243: See notes following RCW 80.36.555.

Additional notes found at www.leg.wa.gov

80.04.110 Complaints—Hearings—Water systems not meeting board of health standards—Drinking water standards—Nonmunicipal water systems audits. (*Effective July 1, 2012.*) (1)(a) Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, or by the public counsel section of the office of the attorney general, or its successor, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of this title, Title 81 RCW, or of any order or rule of the commission.

(b) No complaint may be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, wastewater company, or telecommunications company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water, wastewater company services, or telecommunications service, or at least twenty-five percent of the consumers or purchasers of the company's service.

(c) When two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission has power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as is found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it is proper for the commission to take into consideration the

rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

(2) All matters upon which complaint may be founded may be joined in one hearing, and no motion may be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided. However, all grievances to be inquired into must be plainly set forth in the complaint. No complaint may be dismissed because of the absence of direct damage to the complainant.

(3) Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or corporation complained of, which must be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing may not be less than ten days after the date of the service of such notice and complaint, excepting as herein provided. The commission shall enter its final order with respect to a complaint filed by any entity or person other than the commission within ten months from the date of filing of the complaint, unless the date is extended for cause. Rules of practice and procedure not otherwise provided for in this title may be prescribed by the commission. Such rules may include the requirement that a complainant use informal processes before filing a formal complaint.

(4)(a) The commission may, as appropriate, audit a nonmunicipal water system upon receipt of an administrative order from the department, or the city or county in which the water system is located, finding that the water delivered by a system does not meet state board of health standards adopted under RCW 43.20.050(2)(a) or standards adopted under chapters 70.116 and 70.119A RCW, and the results of the audit must be provided to the requesting department, city, or county. However, the number of nonmunicipal water systems referred to the commission in any one calendar year shall not exceed twenty percent of the water companies subject to commission regulation as defined in RCW 80.04.010.

(b) Every nonmunicipal water system referred to the commission for audit under this section shall pay to the commission an audit fee in an amount, based on the system's twelve-month audited period, equal to the fee required to be paid by regulated companies under RCW 80.24.010.

(5) Any customer or purchaser of service from a water system or company that is subject to commission regulation may file a complaint with the commission if he or she has reason to believe that the water delivered by the system to the customer does not meet state drinking water standards under chapter 43.20 or 70.116 RCW. The commission shall investigate such a complaint, and shall request that the state department of health or local health department of the county in which the system is located test the water for compliance with state drinking water standards, and provide the results of such testing to the commission. The commission may decide not to investigate the complaint if it determines that the complaint has been filed in bad faith, or for the purpose of harassment of the water system or company, or for other reasons has no substantial merit. The water system or company shall bear the expense for the testing. After the commission has

received the complaint from the customer and during the pendency of the commission investigation, the water system or company may not take any steps to terminate service to the customer or to collect any amounts alleged to be owed to the company by the customer. The commission may issue an order or take any other action to ensure that no such steps are taken by the system or company. The customer may, at the customer's option and expense, obtain a water quality test by a licensed or otherwise qualified water testing laboratory, of the water delivered to the customer by the water system or company, and provide the results of such a test to the commission. If the commission determines that the water does not meet state drinking water standards, it shall exercise its authority over the system or company as provided in this title, and may, where appropriate, order a refund to the customer on a pro rata basis for the substandard water delivered to the customer, and shall order reimbursement to the customer for the cost incurred by the customer, if any, in obtaining a water quality test. [2011 c 214 § 7; 1995 c 376 § 12. Prior: 1991 c 134 § 1; 1991 c 100 § 2; prior: 1989 c 207 § 2; 1989 c 101 § 17; 1985 c 450 § 11; 1961 c 14 § 80.04.110; prior: 1913 c 145 § 1; 1911 c 117 § 80; RRS § 10422.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

Findings—1995 c 376: See note following RCW 70.116.060.

Drinking water standards: Chapters 43.21A, 70.119A, and 80.28 RCW.

Additional notes found at www.leg.wa.gov

80.04.160 Rules and regulations. (Effective July 1, 2012.) The commission is hereby authorized and empowered to adopt, promulgate and issue rules and regulations covering the transmission and delivery of messages and conversations, and the furnishing and supply of gas, electricity, wastewater company services, and water, and any and all services concerning the same, or connected therewith; and generally such rules as pertain to the comfort and convenience of the public concerning the subjects treated of in this title. Such rules and regulations must be promulgated and issued by the commission on its own motion, and must be served on the public service company affected thereby as other orders of the commission are served. Any public service company affected thereby, and deeming such rules and regulations, or any of them, improper, unjust, unreasonable, or contrary to law, may within twenty days from the date of service of such order upon it file objections thereto with the commission, specifying the particular grounds of such objections. The commission shall, upon receipt of such objections, fix a time and place for hearing the same, and after a full hearing may make such changes or modifications thereto, if any, as the evidence may justify. The commission has, and it is hereby given, power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings. However, no person desiring to be present at such hearing may be denied permission. Actions may be instituted to review rules and regulations promulgated under this section as in the case of orders of the commission. [2011 c 214 § 8; 1961 c 14 § 80.04.160. Prior: 1911 c 117 § 85; RRS § 10427.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

[2011 RCW Supp—page 1566]

80.04.250 Valuation of public service property. (Effective July 1, 2012.) (1) The commission has power upon complaint or upon its own motion to ascertain and determine the fair value for rate making purposes of the property of any public service company used and useful for service in this state and shall exercise such power whenever it deems such valuation or determination necessary or proper under any of the provisions of this title. In determining what property is used and useful for providing electric, gas, wastewater company services, or water service, the commission may include the reasonable costs of construction work in progress to the extent that the commission finds that inclusion is in the public interest.

(2) The commission has the power to make revaluations of the property of any public service company from time to time.

(3) The commission shall, before any hearing is had, notify the complainants and the public service company concerned of the time and place of such hearing by giving at least thirty days' written notice thereof, specifying that at the time and place designated a hearing will be held for the purpose of ascertaining the value of the company's property, used and useful as aforesaid, which notice must be sufficient to authorize the commission to inquire into and pass upon the matters designated in this section. [2011 c 214 § 9; 1991 c 122 § 2; 1961 c 14 § 80.04.250. Prior: 1933 c 165 § 4; 1913 c 182 § 1; 1911 c 117 § 92; RRS § 10441.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

Findings—1991 c 122: "The legislature finds that the state is facing an energy shortage as growth occurs and that inadequate supplies of energy will cause harmful impacts on the entire range of state citizens. The legislature further finds that energy efficiency improvement is the single most effective near term measure to lessen the risk of energy shortage. In the area of electricity, the legislature additionally finds that the Northwest power planning council has made several recommendations, including an update of the commercial building energy code and granting flexible ratemaking alternatives for utility commissions to encourage prudent acquisition of new electric resources." [1991 c 122 § 1.]

Additional notes found at www.leg.wa.gov

80.04.500 Application to municipal utilities. (Effective July 1, 2012.) Nothing in this title authorizes the commission to make or enforce any order affecting rates, tolls, rentals, contracts or charges or service rendered, or the adequacy or sufficiency of the facilities, equipment, instrumentalities or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied or in force affecting any telecommunications line, gas plant, electrical plant, system of sewerage, or water system owned and operated by any city or town, or to make or enforce any order relating to the safety of any telecommunications line, electrical plant, system of sewerage, or water system owned and operated by any city or town, but all other provisions enumerated herein apply to public utilities owned by any city or town. [2011 c 214 § 10; 1985 c 450 § 13; 1969 ex.s. c 210 § 1; 1961 c 14 § 80.04.500. Prior: 1911 c 117 § 105; RRS § 10454.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

Additional notes found at www.leg.wa.gov

80.04.560 Finding. The legislature finds that an electrical company's acquisition of coal transition power helps to achieve the state's greenhouse gas emission reduction goals by effecting an orderly transition to cleaner fuels and supports the state's public policy. [2011 c 180 § 303.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

80.04.570 Power purchase agreement for acquisition of coal transition power. (Expires December 31, 2025.) (1) On the petition of an electrical company, the commission shall approve or disapprove a power purchase agreement for acquisition of coal transition power, as defined in RCW 80.80.010, and the recovery of related acquisition costs. No agreement for an electrical company's acquisition of coal transition power takes effect until it is approved by the commission.

(2) Any power purchase agreement for the acquisition of coal transition power pursuant to this section must provide for modification of the power purchase agreement to the satisfaction of the parties thereto in the event that a new or revised emission or performance standard or other new or revised operational or financial requirement or limitation directly or indirectly addressing greenhouse gas emissions is imposed by state or federal law, rules, or regulatory requirements. Such a modification to a power purchase agreement agreed to by the parties must be reviewed and considered for approval by the commission, considering the circumstances existing at the time of such a review, under procedures and standards set forth in this section. In the event the parties cannot agree to modification of the power purchase agreement, either party to the agreement has the right to terminate the agreement if it is adversely affected by this new standard, requirement, or limitation.

(3) When a petition is filed, the commission shall provide notice to the public and potentially affected parties and set the petition for hearing as an adjudicative proceeding under chapter 34.05 RCW. Any party may request that the commission expedite the hearing of that petition. The hearing of such a petition is not considered a general rate case. The electrical company must file supporting testimony and exhibits together with the power purchase agreement for coal transition power. Information provided by the facility owner to the purchasing electrical company for evaluating the costs and benefits associated with acquisition of coal transition power must be made available to other parties to the petition under a protective order entered by the commission. An administrative law judge of the commission may enter an initial order including findings of fact and conclusions of law, as provided in RCW 80.01.060(3). The commission shall issue a final order that approves or disapproves the power purchase agreement for acquisition of coal transition power within one hundred eighty days after an electrical company files the petition.

(4) The commission must approve a power purchase agreement for acquisition of coal transition power pursuant to this section only if the commission determines that, considering the circumstances existing at the time of such a review: The terms of such an agreement provide adequate protection to ratepayers and the electrical company during the term of such an agreement or in the event of early termination; the

resource is needed by the electrical company to serve its ratepayers and the resource meets the need in a cost-effective manner as determined under the lowest reasonable cost resource standards under chapter 19.280 RCW, including the cost of the power purchase agreement plus the equity component as determined in this section. As part of these determinations, the commission shall consider, among other factors, the long-term economic risks and benefits to the electrical company and its ratepayers of such a long-term purchase.

(5) If the commission has not issued a final order within one hundred eighty days from the date the petition is filed, or if the commission disapproves the petition, the power purchase agreement for acquisition of coal transition power is null and void. In the event the commission approves the agreement upon conditions other than those set forth in the petition, the electrical company has the right to reject the agreement.

(6)(a) Upon commission approval of an electrical company's power purchase agreement for acquisition of coal transition power in accordance with this section, the electrical company is allowed to earn the equity component of its authorized rate of return in the same manner as if it had purchased or built an equivalent plant and to recover the cost of the coal transition power under the power purchase agreement. Any power purchase agreement for acquisition of coal transition power that earns a return on equity may not be included in an imputed debt calculation for setting customer rates.

(b) For purposes of determining the equity value, the cost of an equivalent plant is the least cost purchased or self-built electric generation plant with equivalent capacity. In determining the least cost plant, the commission may rely on the electrical company's most recent filed integrated resource plan. The cost of an equivalent plant, in dollars per kilowatt, must be determined in the original process of commission approval for each power purchase agreement for coal transition power.

(c) The equivalent plant cost determined in the approval process must be amortized over the life of the power purchase agreement for acquisition of coal transition power to determine the recovery of the equity value.

(d) The recovery of the equity component must be determined and approved in the review process set forth in this section. The approved equity value must be in addition to the approved cost of the power purchase agreement.

(7) Authorizing recovery of costs under a power purchase agreement for acquisition of coal transition power does not prohibit the commission from authorizing recovery of an electrical company's acquisition of capacity resources for the purpose of integrating intermittent power or following load.

(8) Neither chapter 180, Laws of 2011 nor the commission's approval of a power purchase agreement for acquisition of coal transition power that includes the ability to earn the equity component of an electrical company's authorized rate of return establishes any precedent for an electrical company to receive an equity return on any other power purchase agreement or other power contract.

(9) For purposes of this section, "power purchase agreement" means a long-term financial commitment as defined in *RCW 80.80.010(15)(b).

(10) This section expires December 31, 2025. [2011 c 180 § 304.]

*Reviser's note: RCW 80.80.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (15) to subsection (16).

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

80.04.580 Regulatory fee on wastewater companies regulated by the commission—Rule-making authority. (Effective July 1, 2012.) (1) Every wastewater company subject to regulation by the commission must, on or before the date specified by the commission for filing annual reports under RCW 80.04.080, pay to the commission a regulatory fee.

(2) The commission must assess such regulatory fees in amounts sufficient for the commission to recover the commission's actual and reasonable costs of supervising and regulating wastewater companies.

(3) Any payment of a fee assessed under this section made after the due date must include a late fee of two percent of the amount due.

(4) Delinquent fees accrue interest at the rate of one percent per month.

(5) The provisions of RCW 80.04.030, 80.04.040, and 80.04.050 apply to regulatory fees for wastewater companies.

(6) The commission is authorized and empowered to adopt and issue rules and regulations to implement this section, including establishing the methodologies and procedures for developing, assessing, and collecting fees under this section. [2011 c 214 § 4.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

Chapter 80.28 RCW

GAS, ELECTRICAL, AND WATER COMPANIES

Sections

80.28.010	Duties as to rates, services, and facilities—Limitations on termination of utility service for residential heating. <i>(Effective July 1, 2012.)</i>
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80.28.090	Unreasonable preference prohibited. <i>(Effective July 1, 2012.)</i>
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80.28.185	Water companies or wastewater companies within counties—Commission may regulate. <i>(Effective July 1, 2012.)</i>
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80.28.275	Water or wastewater companies—Assumption of substandard water system or system of sewerage—Limited immunity from liability. <i>(Effective July 1, 2012.)</i>
80.28.320	Regulation of battery charging facilities.
80.28.330	Certificate of public convenience and necessity—Bond or equivalent surety—Rule-making authority. <i>(Effective July 1, 2012.)</i>
80.28.340	Determination that a wastewater company is unfit to provide wastewater service on a system of sewerage—Commission may order transfer—Power of eminent domain. <i>(Effective July 1, 2012.)</i>
80.28.350	Petition to place a wastewater company in receivership—Power of eminent domain. <i>(Effective July 1, 2012.)</i>

80.28.010 Duties as to rates, services, and facilities—Limitations on termination of utility service for residential heating. (Effective July 1, 2012.) (1) All charges made, demanded or received by any gas company, electrical company, wastewater company, or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient. Reasonable charges necessary to cover the cost of administering the collection of voluntary donations for the purposes of supporting the development and implementation of evergreen community management plans and ordinances under RCW 80.28.300 must be deemed as prudent and necessary for the operation of a utility.

(2) Every gas company, electrical company, wastewater company, and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any gas company, electrical company, wastewater company, or water company, affecting or pertaining to the sale or distribution of its product or service, must be just and reasonable.

(4) Utility service for residential space heating shall not be terminated between November 15 through March 15 if the customer:

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

(b) Provides self-certification of household income for the prior twelve months to a grantee of the department of commerce, which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information provided in the self-certification;

(c) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

(d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

(e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15th and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer is not eligible for protections under this chapter until the past due bill is paid. The plan may not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

(f) Agrees to pay the moneys owed even if he or she moves.

(5) The utility shall:

(a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

(b) Assist the customer in fulfilling the requirements under this section;

(c) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area;

(d) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this subsection. Customers who qualify for payment plans under this section who default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected; and

(e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer contacts the utility and fulfills the other requirements of this section.

(6) A payment plan implemented under this section is consistent with RCW 80.28.080.

(7) Every gas company and electrical company shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(8) Every gas company, electrical company, wastewater company, and water company shall construct and maintain such facilities in connection with the manufacture and distribution of its product, or provision of its services, as will be efficient and safe to its employees and the public.

(9) An agreement between the customer and the utility, whether oral or written, does not waive the protections afforded under this chapter.

(10) In establishing rates or charges for water service, water companies as defined in RCW 80.04.010 may consider the achievement of water conservation goals and the discouragement of wasteful water use practices. [2011 c 214 § 11; 2008 c 299 § 35; 1995 c 399 § 211. Prior: 1991 c 347 § 22; 1991 c 165 § 4; 1990 1st ex.s. c 1 § 5; 1986 c 245 § 5; 1985 c 6 § 25; 1984 c 251 § 4; 1961 c 14 § 80.28.010; prior: 1911 c 117 § 26; RRS § 10362.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

Short title—2008 c 299: See note following RCW 35.105.010.

Purposes—1991 c 347: See note following RCW 90.42.005.

Findings—1991 c 165: See note following RCW 35.21.300.

Additional notes found at www.leg.wa.gov

80.28.020 Commission to fix just, reasonable, and compensatory rates. (Effective July 1, 2012.) Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any gas company, electrical company, wastewater company, or water company, for gas, electricity, wastewater company services, or water, or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order. [2011 c 214 § 12; 1961 c 14 § 80.28.020. Prior: 1911 c 117 § 54, part; RRS § 10390, part.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

80.28.030 Commission may order improved quality of commodity—Ordering improvements to the storage, distribution, or supply of water—Ordering improvements to the system of sewerage. (Effective July 1, 2012.) (1) Whenever the commission finds, after such hearing, that the illuminating or heating power, purity or pressure of gas, the efficiency of electric lamp supply, the voltage of the current supplied for light, heat or power, the quality of wastewater company services, or the purity, quality, volume, and pressure of water, supplied by any gas company, electrical company, wastewater company, or water company, as the case may be, is insufficient, impure, inadequate or inefficient, it shall order such improvement in the manufacture, distribution or supply of gas, in the manufacture, transmission or supply of electricity, in the operation of the services and facilities of wastewater companies, or in the storage, distribution or supply of water, or in the methods employed by such gas company, electrical company, wastewater company, or water company, as will in its judgment be efficient, adequate, just and reasonable. Failure of a water company to comply with state board of health standards adopted under RCW

43.20.050(2)(a) or department standards adopted under chapter 70.116 RCW for purity, volume, and pressure is prima facie evidence that the water supplied is insufficient, impure, inadequate, or inefficient. Failure of a wastewater company to comply with standards and permit conditions adopted and implemented under chapter 70.118B or 90.48 RCW for treatment and disposal of sewerage, is prima facie evidence that the system of sewerage is insufficient, inadequate, or inefficient.

(2) In ordering improvements in the storage, distribution, or supply of water, the commission shall consult and coordinate with the department of health. In the event that a water company fails to comply with an order of the commission within the deadline specified in the order, the commission may request that the department petition the superior court of Thurston county to place the company in receivership pursuant to chapter 7.60 RCW.

(3) In ordering improvements to the system of sewerage, the commission shall consult and coordinate with the department of health or the department of ecology, as appropriate to the agencies' jurisdiction. In the event that a wastewater company fails to comply with an order of the commission within the deadline specified in the order, the commission may petition the superior court of Thurston county to place the company in receivership pursuant to chapter 7.60 RCW. [2011 c 214 § 13; 1989 c 207 § 4; 1961 c 14 § 80.28.030. Prior: 1911 c 117 § 54, part; RRS § 10390, part.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

80.28.040 Commission may order improved service—Water companies, system of sewerage noncompliance, receivership. (Effective July 1, 2012.) (1) Whenever the commission finds, after hearing, that any rules, regulations, measurements or the standard thereof, practices, acts or services of any such gas company, electrical company, wastewater company, or water company are unjust, unreasonable, improper, insufficient, inefficient or inadequate, or that any service which may be reasonably demanded is not furnished, the commission shall fix the reasonable rules, regulations, measurements or the standard thereof, practices, acts or service to be thereafter furnished, imposed, observed and followed, and shall fix the same by order or rule.

(2) In ordering improvements to the service of any water company, the commission shall consult and coordinate with the department of health. In the event that a water company fails to comply with an order of the commission within the deadline specified in the order, the commission may request that the department petition the superior court of Thurston county to place the company in receivership pursuant to chapter 7.60 RCW.

(3) In ordering improvements to the service of any system of sewerage, the commission shall consult and coordinate with the department of health or the department of ecology, as appropriate to the agencies' jurisdiction. In the event that a wastewater company fails to comply with an order of the commission within the deadline specified in the order, the commission may petition the superior court of Thurston county to place the company in receivership pursuant to chapter 7.60 RCW. [2011 c 214 § 14; 1989 c 207 § 5; 1961 c

14 § 80.28.040. Prior: 1911 c 117 § 54, part; RRS § 10390, part.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

80.28.050 Tariff schedules to be filed with commission—Public schedules. (Effective July 1, 2012.) Every gas company, electrical company, wastewater company, and water company shall file with the commission and shall print and keep open to public inspection schedules in such form as the commission may prescribe, showing all rates and charges made, established or enforced, or to be charged or enforced, all forms of contract or agreement, all rules and regulations relating to rates, charges or service, used or to be used, and all general privileges and facilities granted or allowed by such gas company, electrical company, wastewater company, or water company. [2011 c 214 § 15; 1961 c 14 § 80.28.050. Prior: 1911 c 117 § 27; RRS § 10363.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

Duty of company to fix rate for wholesale power on request of public utility district: RCW 54.04.100.

80.28.060 Tariff changes—Statutory notice—Exception—Waiver of provisions during state of emergency. (Effective July 1, 2012.) (1) Unless the commission otherwise orders, no change may be made in any rate or charge or in any form of contract or agreement or in any rule or regulation relating to any rate, charge or service, or in any general privilege or facility which shall have been filed and published by a gas company, electrical company, wastewater company, or water company in compliance with the requirements of RCW 80.28.050 except after thirty days' notice to the commission and publication for thirty days, which notice must plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect and all proposed changes must be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Proposed changes may be suspended by the commission within thirty days or before the stated effective date of the proposed change, whichever is later. The commission, for good cause shown, may allow changes without requiring the thirty days' notice by duly filing, in such manner as it may direct, an order specifying the changes so to be made and the time when it takes effect. All such changes must be immediately indicated upon its schedules by the company affected. When any change is made in any rate or charge, form of contract or agreement, or any rule or regulation relating to any rate or charge or service, or in any general privilege or facility, the effect of which is to increase any rate or charge, then in existence, attention must be directed on the copy filed with the commission to such increase by some character immediately preceding or following the item in such schedule, such character to be in form as designated by the commission.

(2) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to pro-

mote and secure the safety and protection of the civilian population. [2011 c 214 § 16; 2008 c 181 § 402; 1989 c 152 § 1; 1961 c 14 § 80.28.060. Prior: 1911 c 117 § 28; RRS § 10364.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

Part headings not law—2008 c 181: See note following RCW 43.06.220.

80.28.080 Published rates to be charged—Exceptions. (Effective July 1, 2012.) (1)(a) Except as provided otherwise in this subsection, no gas company, electrical company, wastewater company, or water company may charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time, nor may any such company directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified, or furnish its product at free or reduced rates except to its employees and their families, and its officers, attorneys, and agents; to hospitals, charitable and eleemosynary institutions and persons engaged in charitable and eleemosynary work; to indigent and destitute persons; to national homes or state homes for disabled volunteer soldiers and soldiers' and sailors' homes.

For the purposes of this subsection (1):

(i) "Employees" includes furloughed, pensioned and superannuated employees, persons who have become disabled or infirm in the service of any such company; and

(ii) "Families" includes the families of those persons named in this proviso, the families of persons killed or dying in the service, also the families of persons killed, and the surviving spouse prior to remarriage, and the minor children during minority of persons who died while in the service of any of the companies named in this subsection (1).

(b) Water companies may furnish free or at reduced rates water for the use of the state, or for any project in which the state is interested.

(c) Gas companies, electrical companies, wastewater companies, and water companies may charge the defendant for treble damages awarded in lawsuits successfully litigated under RCW 80.28.240.

(2) No gas company, electrical company, wastewater company, or water company may extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are regularly and uniformly extended to all persons and corporations under like circumstances. [2011 c 214 § 17; 1985 c 427 § 2; 1973 1st ex.s. c 154 § 116; 1961 c 14 § 80.28.080. Prior: 1911 c 117 § 29; RRS § 10365.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

Additional notes found at www.leg.wa.gov

80.28.090 Unreasonable preference prohibited. (Effective July 1, 2012.) No gas company, electrical company, wastewater company, or water company may make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject

any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [2011 c 214 § 18; 1961 c 14 § 80.28.090. Prior: 1911 c 117 § 30; RRS § 10366.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

80.28.100 Rate discrimination prohibited—Exception. (Effective July 1, 2012.) No gas company, electrical company, wastewater company, or water company may, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity, wastewater company services, or water, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions. [2011 c 214 § 19; 1961 c 14 § 80.28.100. Prior: 1911 c 117 § 31; RRS § 10367.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

Reduced utility rates for low-income senior citizens and other low-income citizens: RCW 74.38.070.

80.28.110 Service to be furnished on reasonable notice. (Effective July 1, 2012.) Every gas company, electrical company, wastewater company, or water company, engaged in the sale and distribution of gas, electricity or water or the provision of wastewater company services, shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto, suitable facilities for furnishing and furnish all available gas, electricity, wastewater company services, and water as demanded, except that a water company may not furnish water contrary to the provisions of water system plans approved under chapter 43.20 or 70.116 RCW and wastewater companies may not provide services contrary to the approved general sewer plan. [2011 c 214 § 20; 1990 c 132 § 5; 1961 c 14 § 80.28.110. Prior: 1911 c 117 § 33; RRS § 10369.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

Legislative findings—Severability—1990 c 132: See note following RCW 43.20.240.

Duty of company to fix rate for wholesale power on request of public utility district: RCW 54.04.100.

80.28.120 Effect on existing contracts. (Effective July 1, 2012.) Every gas, water, wastewater, or electrical company owning, operating or managing a plant or system for the distribution and sale of gas, water or electricity, or the provision of wastewater company services to the public for hire is, and is held to be, a public service company as to such plant or system and as to all gas, water, wastewater company services, or electricity distributed or furnished therefrom, whether such gas, water, wastewater company services, or electricity be sold wholesale or retail or be distributed wholly to the general public or in part as surplus gas, water, wastewater com-

pany services, or electricity to manufacturing or industrial concerns or to other public service companies or municipalities for redistribution. Nothing in this title may be construed to prevent any gas company, electrical company or water company from continuing to furnish its product or the use of its lines, equipment or service under any contract or contracts in force on June 7, 1911, at the rates fixed in such contract or contracts. However, the commission has power, in its discretion, to direct by order that such contract or contracts be terminated by the company party thereto and thereupon such contract or contracts must be terminated by such company as and when directed by such order. [2011 c 214 § 21; 1961 c 14 § 80.28.120. Prior: 1933 c 165 § 1; 1911 c 117 § 34; RRS § 10370.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

80.28.130 Repairs, improvements, changes, additions, or extensions may be directed. (*Effective July 1, 2012.*) Whenever the commission finds, after hearing had upon its own motion or upon complaint, that repairs or improvements, to, or changes in, any gas plant, electrical plant, system of sewerage, or water system ought to be made, or that any additions or extensions should reasonably be made thereto, in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for manufacturing, distributing or supplying gas, electricity, wastewater company services, or water, the commission may enter an order directing that such reasonable repairs, improvements, changes, additions or extensions of such gas plant, electrical plant, system of sewerage, or water system be made. [2011 c 214 § 22; 1961 c 14 § 80.28.130. Prior: 1911 c 117 § 70; RRS § 10406.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

80.28.185 Water companies or wastewater companies within counties—Commission may regulate. (*Effective July 1, 2012.*) The commission may develop and enter into an agreement with a county to carry out the regulatory functions of this chapter with regard to water companies or wastewater companies located within the boundary of that county. The duration of the agreement, the duties to be performed, and the remuneration to be paid by the commission are subject to agreement by the commission and the county. [2011 c 214 § 23; 1989 c 207 § 6.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

80.28.240 Recovery of damages by utility company for tampering, unauthorized connections, diversion of services. (*Effective July 1, 2012.*) (1) A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts to:

(a) Divert, or cause to be diverted, utility services by any means whatsoever;

(b) Make, or cause to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility;

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(c) Prevent any utility meter or other device used in determining the charge for utility services from accurately performing its measuring function by tampering or by any other means;

(d) Tamper with any property owned or used by the utility to provide utility services; or

(e) Use or receive the direct benefit of all or a portion of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use or that the use or receipt was without the authorization or consent of the utility.

(2) In any civil action brought under this section, the utility may recover from the defendant as damages three times the amount of actual damages, if any, plus the cost of the suit and reasonable attorney's fees, plus the costs incurred on account of the bypassing, tampering, or unauthorized reconnection, including but not limited to costs and expenses for investigation, disconnection, reconnection, service calls, and expert witnesses.

(3) Any damages recovered under this section in excess of the actual damages sustained by the utility may be taken into account by the utilities and transportation commission or other applicable rate-making agency in establishing utility rates.

(4) As used in this section:

(a) "Customer" means the person in whose name a utility service is provided;

(b) "Divert" means to change the intended course or path of electricity, gas, or water without the authorization or consent of the utility;

(c) "Person" means any individual, partnership, firm, association, or corporation or government agency;

(d) "Reconnection" means the commencement of utility service to a customer or other person after service has been lawfully disconnected by the utility;

(e) "Tamper" means to rearrange, injure, alter, interfere with, or otherwise prevent from performing the normal or customary function;

(f) "Utility" means any electrical company, gas company, wastewater company, or water company as those terms are defined in RCW 80.04.010, and includes any electrical, gas, system of sewerage, or water system operated by any public agency; and

(g) "Utility service" means the provision of electricity, gas, water, wastewater company services, or any other service or commodity furnished by the utility for compensation. [2011 c 214 § 24; 1989 c 11 § 30; 1985 c 427 § 1.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

Additional notes found at www.leg.wa.gov

80.28.270 Water or wastewater companies—Extension, installation, or connection charges. (*Effective July 1, 2012.*) The commission's jurisdiction over the rates, charges, practices, acts or services of any water company or wastewater company includes any aspect of line extension, service installation, or service connection. If the charges for such services are not set forth by specific amount in the company's tariff filed with the commission pursuant to RCW 80.28.050, the commission shall determine the fair, just, reasonable, and sufficient charge for such extension, installation, or connection.

tion. In any such proceeding in which there is no specified tariffed rate, the burden is on the company to prove that its proposed charges are fair, just, reasonable, and sufficient. [2011 c 214 § 25; 1991 c 101 § 2.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

80.28.275 Water or wastewater companies—Assumption of substandard water system or system of sewerage—Limited immunity from liability. (Effective July 1, 2012.) A water company or a wastewater company assuming responsibility for a water system or system of sewerage that is not in compliance with state or federal requirements, and its agents and employees, are immune from lawsuits or causes of action, based on noncompliance with state or federal requirements, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the water company or wastewater company has submitted and is complying with a plan and schedule of improvements approved by the department of health or the department of ecology, as appropriate to the agencies' jurisdiction. This immunity expires on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith and is subject to the provisions of law governing clean water as referenced by the commission by rule. [2011 c 214 § 26; 1994 c 292 § 9.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

Findings—Intent—1994 c 292: See note following RCW 57.04.050.

80.28.320 Regulation of battery charging facilities. The commission shall not regulate the rates, services, facilities, and practices of an entity that offers battery charging facilities to the public for hire; if: (1) That entity is not otherwise subject to commission jurisdiction as an electrical company; or (2) that entity is otherwise subject to commission jurisdiction as an electrical company, but its battery charging facilities and services are not subsidized by any regulated service. An electrical company may offer battery charging facilities as a regulated service, subject to commission approval. [2011 c 28 § 2.]

80.28.330 Certificate of public convenience and necessity—Bond or equivalent surety—Rule-making authority. (Effective July 1, 2012.) (1) A wastewater company may not own or develop a system of sewerage for the purpose of providing service for compensation without first having obtained from the commission a certificate declaring that the public convenience and necessity requires such service.

(2) Issuance of the certificate of public convenience and necessity must be determined on, but not limited to, the following factors:

(a) A comprehensive business plan detailing the design, construction, operation, and maintenance of the proposed service system;

(b) Demonstration of sufficient financial resources to properly operate and maintain the proposed system, and to replace and upgrade capital assets;

(c) The need to develop a new stand alone system instead of connecting to an existing system;

(d) A statement of prior experience, if any, in such field by the petitioner, set out in an affidavit or declaration;

(e) A certification from the municipal corporation that it is not willing and able to provide the sewerage services being proposed; and

(f) A certification from the municipal corporation that the company's proposed service is consistent with the locally approved general sewer plan.

(3) The commission may, after providing notice and an opportunity for public comment, issue certificates, or for good cause shown refuse to issue them, or issue them for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as, in its judgment, the public convenience and necessity may require.

(4) No certificate may be transferred to any private or nonprofit entity unless authorized by the commission.

(5)(a) Prior to the commission approving a wastewater company to provide new service or extend existing service, the wastewater company must file and continuously maintain in effect, a bond, or equivalent surety as determined by the commission, with the commission to ensure that there are sufficient funds to:

(i) Design, construct, operate, and maintain the proposed system;

(ii) Replace and upgrade capital assets as required by federal or state law or by order of the department of health or department of ecology; and

(iii) Allow additional connections to the system, if approved by the department of health or the department of ecology.

(b) The bond, or its equivalent surety, is payable under this section to the commission upon:

(i) An order under RCW 80.28.340 to transfer a system or systems of sewerage to a capable wastewater company;

(ii) Notice that the wastewater company does not intend to renew the bond or its equivalent surety or has failed to renew the bond or its equivalent surety; or

(iii) A petition by the commission under RCW 80.28.350, 80.28.030, or 80.28.040 to place a wastewater company in receivership.

(c) The commission must hold the payment in trust until an acquiring wastewater company is designated under RCW 80.28.340 or a receiving entity is designated under RCW 80.28.350, 80.28.030, or 80.28.040, at which point the funds will be made available to the company or entity to expend as directed by the commission.

(6) For purposes of issuing certificates under this chapter, the commission may adopt rules to implement this section.

(7) A wastewater company must obtain commission approval before expanding an existing system beyond the approved capacity set forth in its certificate or acquiring new systems, either by construction or purchase. [2011 c 214 § 3.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

80.28.340 Determination that a wastewater company is unfit to provide wastewater service on a system of sew-

erage—Commission may order transfer—Power of eminent domain. (Effective July 1, 2012.) (1) If the commission determines, after providing notice and opportunity for a hearing in the manner required for complaints under RCW 80.04.110, that a wastewater company is unfit to provide wastewater service on any system of sewerage, under its ownership, the commission may order the transfer of any such system or systems to a capable wastewater company.

(2) In determining whether a wastewater company is unfit to provide wastewater service on a system of sewerage in consultation with the department of health or the department of ecology as appropriate to the agencies' jurisdiction, the commission may consider the company's technical and managerial expertise to operate the system of sewerage, the company's financial soundness and the company's willingness and ability to make ongoing investments necessary to maintain compliance with statutory and regulatory standards for the safety, adequacy, efficiency, and reasonableness of the service provided.

(3) Before ordering the transfer of a system of sewerage owned by a wastewater company that is unfit to provide service, the commission must first determine that:

(a) Alternatives to the transfer are impractical or not economically feasible;

(b) The acquiring wastewater company is willing and able to acquire the system or systems of sewerage, [is] financially sound, and has the technical and managerial expertise to own and operate the system or systems of sewerage in compliance with applicable statutory and regulatory standards; and

(c) Rates paid by existing customers served by the acquiring wastewater company will not increase unreasonably because of the acquisition of the system of sewerage or because of expenditures that may be necessary to assure compliance with applicable statutory and regulatory standards for the safety, adequacy, efficiency, and reasonableness of the service provided.

(4) The sale price for the unfit wastewater company's system or systems of sewerage assets must be determined by agreement between the unfit wastewater company and the acquiring capable wastewater company subject to a finding by the commission that the agreed price is reasonable. A price is deemed reasonable if it does not exceed the original cost of plant in service, minus accumulated depreciation, minus contributions in aid to construction. If the unfit wastewater company and the acquiring capable wastewater company are unable to agree on the sale price or the commission finds that the agreed sale price is not reasonable, the acquiring capable wastewater company may initiate a condemnation proceeding in superior court in the manner provided by chapter 8.04 RCW to determine the compensation to be paid by the acquiring capable wastewater company for the failed system or systems of sewerage assets.

(5) The capable wastewater company acquiring an unfit wastewater company's system or systems shall have the same immunity from liability as wastewater companies assuming standard systems as set forth in RCW 80.28.275.

(6) The commission must provide copies of the notice required by subsection (1) of this section to the department of health or the department of ecology, as appropriate to the

agencies' jurisdiction, and all proximate public entities providing wastewater utility service.

(7) Any capable wastewater company approved by the commission to acquire the system or systems of sewerage of an unfit wastewater company must submit to the commission, for approval, a financial plan, including a timetable, for bringing the acquired system of sewerage assets into compliance with applicable statutory and regulatory standards. The acquiring capable wastewater company must also provide a copy of the plan to the department of health or the department of ecology, as appropriate to the agencies' jurisdiction, and other state or local agency as the commission may direct. The commission must give the department of health or the department of ecology, as appropriate to the agencies' jurisdiction, adequate opportunity to comment on the plan and must consider any comments submitted in deciding whether or not to approve the plan.

(8) The legislature grants to any private entity the power of eminent domain, for exercise only under the circumstances described in this section. However, a private entity must obtain authorization from the city, town, or county with jurisdiction over the subject property after the legislative authority of the city, town, or county has passed an ordinance requiring that property be taken for public use. This subsection does not limit eminent domain authority granted by any other provision of law. [2011 c 214 § 5.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

80.28.350 Petition to place a wastewater company in receivership—Power of eminent domain. (Effective July 1, 2012.) (1) The commission may petition the Thurston county superior court pursuant to chapter 7.60 RCW to place a wastewater company in receivership. The petition must include the names of one or more qualified candidates for receiver who have consented to assume operation of the system of sewerage. The petition must also include a list of interested and qualified individuals, municipal corporations, and wastewater companies with experience in providing wastewater service and a history of satisfactory operation of a system of sewerage. If no other entity is willing and able to be appointed as the receiver, the court must appoint the county or other municipal corporation whose geographic boundaries include, in whole or in part, the system of sewerage at issue. The municipal corporation may designate one of its agencies or divisions to operate the system, or it may contract with another entity to operate the system. The department of health or department of ecology, whichever has jurisdiction, must provide regulatory oversight for managing the system of sewerage.

(2) In any petition for receivership under subsection (1) of this section, the commission must recommend that the court grant the receiver full authority to act in the best interests of the customers served by the system of sewerage. The receiver must assess the capability, in conjunction with the department of health or ecology, whichever has jurisdiction, and local government, for the system to operate in compliance with health and safety standards. The receiver must report to the court and the commission its recommendations for the company's future operation of the system, including the formation of a water-sewer district or other public entity,

or ownership by another existing wastewater company capable of providing service.

(3) If a petition for receivership and verifying affidavit executed by an appropriate official allege an immediate and serious danger to residents constituting an emergency, the court must set the matter for hearing within three days and may appoint a temporary receiver ex parte upon the strength of such petition and affidavit pending a full evidentiary hearing, which must be held within fourteen days after receipt of the petition.

(4) If the court imposes a bond upon a receiver, the amount must reasonably relate to the level of operating revenue generated by, and the capital value of, the wastewater company. Any receiver appointed pursuant to this section may not be held personally liable for any good faith, reasonable effort to assume possession of, and to operate, the system in compliance with the court's orders, subject to the provisions of law governing clean water as referenced by the commission by rule.

(5) The court must authorize the receiver to impose reasonable assessments on the customers of the system of sewerage to recover expenditures for improvements necessary for the public health and safety.

(6) The commission must develop a plan for transfer of the system of sewerage to a new operator and submit its plan to the court. The commission must develop the plan after notice to, and an opportunity to participate by, the receiver, the municipal corporations whose geographic boundaries, in whole or in part, include the system of sewerage at issue, and the public. The commission must complete the plan no later than twelve months after appointment of a receiver.

(a) If the commission finds that no private entity is able or willing to take over the system of sewerage and decides the system of sewerage should be taken over by a municipal corporation whose geographic boundaries include the system of sewerage at issue, in whole or in part, the commission must provide its findings to the court and the court may issue an order to that effect. If the court orders a municipal corporation to take over the system of sewerage, the municipal corporation must promptly institute negotiations to purchase the system. If, within six months of the court's order, the negotiations fail or otherwise do not result in a purchase, the municipal corporation must promptly initiate a condemnation proceeding to acquire the system. The court must terminate the receivership once the purchase is complete.

(b) If the commission decides the system of sewerage should be taken over by a private entity, such as an individual or business, the commission must provide its findings to the court and the court may issue an order to that effect. If the court orders a private entity to take over the system of sewerage, the private entity must promptly institute negotiations to purchase the system. If, within six months of the court's order, the negotiations fail or otherwise do not result in a purchase, the private entity must promptly exercise its power of eminent domain granted by the legislature in subsection (9) of this section to acquire the system. The court must terminate the receivership once the purchase is complete.

(7) Other than pursuant to subsection (6)(a) and (b) of this section, the court may not terminate the receivership, and order the return of the system to the owners, unless the commission approves that action. The court may impose reason-

able conditions upon the return of the system to the owner, including the posting of a bond or other security, routine performance and financial audits, employment of qualified operators and other staff or contracted services, compliance with financial viability requirements, or other measures sufficient to ensure the ongoing proper operation of the system.

(8) If, as part of the ultimate disposition of the system, a condemnation proceeding is commenced to acquire the system of sewerage, the court shall oversee any appraisal of the system conducted under Title 7 RCW to assure that the appraised value properly reflects any reduced value because of the necessity to make improvements to the system. The court has the authority to approve the appraisal and to modify the appraisal based on any information provided at an evidentiary hearing. The court's determination of the proper value of the system, based on the appraisal, is final and only appealable if not supported by substantial evidence. If the appraised value is appealed, the court may order the system's ownership to be transferred upon payment of the approved appraised value.

(9) The legislature grants any municipal corporation, and any private entity the power of eminent domain under the circumstances described in this section. However, a private entity must obtain authorization from the city, town, or county with jurisdiction over the subject property after the legislative authority of the city, town, or county has passed an ordinance requiring that property be taken for public use. This subsection does not limit eminent domain authority granted by any other provision of law. [2011 c 214 § 6.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

Chapter 80.36 RCW TELECOMMUNICATIONS

Sections

80.36.430 Washington telephone assistance program—Excise tax—Expenses of community service voice mail.

80.36.430 Washington telephone assistance program—Excise tax—Expenses of community service voice mail. (1) The Washington telephone assistance program shall be funded by a telephone assistance excise tax on all switched access lines and by funds from any federal government or other programs for this purpose. Switched access lines are defined in RCW 82.14B.020. The telephone assistance excise tax shall be applied equally to all residential and business access lines not to exceed fourteen cents per month. The department shall submit an approved annual budget for the Washington telephone assistance program to the department of revenue no later than March 1st prior to the beginning of each fiscal year. The department of revenue shall then determine the amount of telephone assistance excise tax to be placed on each switched access line and shall inform local exchange companies and the utilities and transportation commission of this amount no later than May 1st. The department of revenue shall determine the amount of telephone assistance excise tax by dividing the total of the program budget funded by the telephone assistance excise tax, as submitted by the department, by the total number of switched access lines in the prior calendar year. The telephone assis-

tance excise tax shall be separately identified on each ratepayer's bill as the "Washington telephone assistance program." All money collected from the telephone assistance excise tax shall be transferred to a telephone assistance fund administered by the department.

(2) Local exchange companies shall bill the fund for their expenses incurred in offering the telephone assistance program, including administrative and program expenses. The department shall disburse the money to the local exchange companies. The department is exempted from having to conclude a contract with local exchange companies in order to effect this reimbursement. The department shall recover its administrative costs from the fund. The department may specify by rule the range and extent of administrative and program expenses that will be reimbursed to local exchange companies.

(3) The department shall enter into an agreement with the department of commerce for an amount not to exceed eight percent of the prior fiscal year's total revenue for the administrative and program expenses of providing community service voice mail services. The community service voice mail service may include toll-free lines in community action agencies through which recipients can access their community service voice mailboxes at no charge.

(4) During the 2009-2011 and 2011-2013 biennia, the department shall enter into an agreement with the WIN 211 organization for operational support. During the 2011-2013 biennium, the department shall provide five hundred thousand dollars per fiscal year for this purpose.

(5) During the 2009-2011 biennium, the telephone assistance fund shall also be used in support of the economic services administration call centers and related operations. [2011 1st sp.s. c 50 § 968; 2011 c 5 § 919; 2010 1st sp.s. c 37 § 951; 2009 c 564 § 960; 2004 c 254 § 2; 2003 c 134 § 4; 1990 c 170 § 3; 1987 c 229 § 5.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2011 c 5: See note following RCW 43.79.487.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 564: See note following RCW 2.68.020.

Responsibility for collection of tax—Implementation—2004 c 254: See notes following RCW 43.20A.725.

Effective date—2004 c 254: See note following RCW 82.72.010.

Effective date—2003 c 134: See note following RCW 80.36.005.

Chapter 80.50 RCW

ENERGY FACILITIES—SITE LOCATIONS

Sections

80.50.071	Council to receive applications—Deposits or charges for application processing or certification monitoring.
80.50.100	Recommendations to governor—Expedited processing—Approval or rejection of certification—Reconsideration.

80.50.071 Council to receive applications—Deposits or charges for application processing or certification monitoring. (1) The council shall receive all applications for energy facility site certification. Each applicant shall pay such reasonable costs as are actually and necessarily incurred by the council in processing an application.

(a) Each applicant shall, at the time of application submission, deposit fifty thousand dollars, or such greater amount as may be specified by the council after consultation with the applicant. Costs that may be charged against the deposit include, but are not limited to, independent consultants' costs, councilmember's wages, employee benefits, costs of a hearing examiner, costs of a court reporter, staff salaries, wages and employee benefits, goods and services, travel expenses, and miscellaneous direct expenses as arise directly from processing an application.

(b) The council may commission its own independent consultant study to measure the consequences of the proposed energy facility on the environment or any matter that it deems essential to an adequate appraisal of the site. The council shall provide an estimate of the cost of the study to the applicant and consider applicant comments.

(c) The council shall submit to each applicant a statement of such expenditures made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The applicant shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: PROVIDED, That such applicant may, at the request of the council, increase the amount of funds on deposit to cover anticipated expenses during peak periods of application processing. Any funds remaining unexpended at the conclusion of application processing shall be refunded to the applicant, or at the applicant's option, credited against required deposits of certificate holders.

(2) Each certificate holder shall pay such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction, operation, and site restoration of the facility.

(a) Each certificate holder, within thirty days of execution of the site certification agreement, shall have on deposit fifty thousand dollars, or such greater amount as may be specified by the council after consultation with the certificate holder. Costs that may be charged against the deposit include, but are not limited to, those specified in subsection (1)(a) of this section as arise from inspection and determination of compliance by the certificate holder with the terms of the certification.

(b) The council shall submit to each certificate holder a statement of such expenditures actually made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The certificate holder shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: PROVIDED, That if the actual expenditures for inspection and determination of compliance in the preceding calendar quarter have exceeded the amount of funds on deposit, such excess costs shall be paid by the certificate holder.

(3) If an applicant or certificate holder fails to provide the initial deposit, or if subsequently required payments are not received within thirty days following receipt of the statement from the council, the council may (a) in the case of the applicant, suspend processing of the application until payment is received; or (b) in the case of a certificate holder, suspend the certification.

(4) All payments required of the applicant or certificate holder under this section are to be made to the state treasurer who shall make payments as instructed by the council from the funds submitted. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the applicant or certificate holder.

(5)(a) Upon receipt of an application for an energy facility site certification proposing an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least one hundred fifteen thousand volts, the council shall notify in writing the United States department of defense. The notification shall include, but not be limited to, the following:

- (i) A description of the proposed energy plant or alternative energy resource;
- (ii) The location of the site;
- (iii) The placement of the energy plant or alternative energy resource on the site;
- (iv) The date and time by which comments must be received by the council; and
- (v) Contact information of the council and the applicant.

(b) The purpose of the written notification is to provide an opportunity for the United States department of defense to comment upon the application, and to identify potential issues relating to the placement and operations of the energy plant or alternative energy resource, before a site certification application is approved. The time period set forth by the council for receipt of such comments shall not extend the time period for the council's processing of the application.

(c) In order to assist local governments required to notify the United States department of defense under RCW 35.63.270, 35A.63.290, and 36.01.320, the council shall post on its web site the appropriate information for contacting the United States department of defense. [2011 c 261 § 1; 2010 c 152 § 3; 2006 c 196 § 5; 1977 ex.s. c 371 § 16.]

Rule-making costs proportionately divided—2010 c 152: "Rule-making costs incurred by the energy facility site evaluation council in implementing and administering this act shall be proportionately divided among the certificate holders and applicants directly affected by this act." [2010 c 152 § 4.]

80.50.100 Recommendations to governor—Expedited processing—Approval or rejection of certification—Reconsideration. (1)(a) The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant.

(b) In the case of an application filed prior to December 31, 2025, for certification of an energy facility proposed for construction, modification, or expansion for the purpose of providing generating facilities that meet the requirements of RCW 80.80.040 and are located in a county with a coal-fired electric generating [generation] facility subject to RCW 80.80.040(3)(c), the council shall expedite the processing of the application pursuant to RCW 80.50.075 and shall report its recommendations to the governor within one hundred eighty days of receipt by the council of such an application, or a later time as is mutually agreed by the council and the applicant.

(2) If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

(3)(a) Within sixty days of receipt of the council's report the governor shall take one of the following actions:

- (i) Approve the application and execute the draft certification agreement; or
- (ii) Reject the application; or
- (iii) Direct the council to reconsider certain aspects of the draft certification agreement.

(b) The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the adjudicative proceeding for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within sixty days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

(4) The rejection of an application for certification by the governor shall be final as to that application but shall not preclude submission of a subsequent application for the same site on the basis of changed conditions or new information. [2011 c 180 § 109; 1989 c 175 § 174; 1977 ex.s. c 371 § 8; 1975-'76 2nd ex.s. c 108 § 36; 1970 ex.s. c 45 § 10.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

Additional notes found at www.leg.wa.gov

Chapter 80.70 RCW

CARBON DIOXIDE MITIGATION

Sections

80.70.080 Certain applicants for a natural gas-fired generation plant exempt from chapter. (*Contingent expiration date.*)

80.70.080 Certain applicants for a natural gas-fired generation plant exempt from chapter. (*Contingent expiration date.*) (1) An applicant for a natural gas-fired generation plant to be constructed in a county with a coal-fired electric generation facility subject to RCW 80.80.040(3)(c) is exempt from this chapter if the application is filed before December 31, 2025.

(2) For the purposes of this section, an applicant means the owner of a coal-fired electric generation facility subject to RCW 80.80.040(3)(c).

(3) This section expires December 31, 2025, or when the station-generating capability of all natural gas-fired generation plants approved under this section equals the station-

generating capability from a coal-fired electric generation facility subject to RCW 80.80.040(3)(c). [2011 c 180 § 306.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

Chapter 80.80 RCW

GREENHOUSE GAS EMISSIONS— BASELOAD ELECTRIC GENERATION PERFORMANCE STANDARD

Sections

80.80.010	Definitions.
80.80.040	Greenhouse gas emissions performance standards—Rules—Sequestration.
80.80.060	Electrical companies—Baseload electric generation—Long-term financial commitments—Rules.
80.80.070	Consumer-owned utilities—Baseload electric generation—Long-term financial commitments.
80.80.100	Memorandum of agreement with owners of a coal-fired baseload facility—Required provisions.
80.80.110	Limitation on adopting or imposing a greenhouse gas emission performance standard on certain facilities.
80.80.120	Memorandum of agreement—Authorized provisions.

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

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for consumer-owned utilities under its jurisdiction; or (b) an independent auditor selected by a consumer-owned utility that is not under the jurisdiction of the state auditor.

(3) "Average available greenhouse gas emissions output" means the level of greenhouse gas emissions as surveyed and determined by the energy policy division of the department of commerce under RCW 80.80.050.

(4) "Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.

(5) "Coal transition power" means the output of a coal-fired electric generation facility that is subject to an obligation to meet the standards contained in RCW 80.80.040(3)(c).

(6) "Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(7) "Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

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

(9) "Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an indus-

trial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

(10) "Department" means the department of ecology.

(11) "Distributed generation" means electric generation connected to the distribution level of the transmission and distribution grid, which is usually located at or near the intended place of use.

(12) "Electric utility" means an electrical company or a consumer-owned utility.

(13) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(14) "Governing board" means the board of directors or legislative authority of a consumer-owned utility.

(15) "Greenhouse gas" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(16) "Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

(17) "Memorandum of agreement" or "memorandum" means a binding and enforceable contract entered into pursuant to RCW 80.80.100 between the governor on behalf of the state and an owner of a baseload electric generation facility in the state that produces coal transition power.

(18) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

(19) "Power plant" means a facility for the generation of electricity that is permitted as a single plant by a jurisdiction inside or outside the state.

(20) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility. "Upgrade" does not include routine or necessary maintenance, installation of emission control equipment, installation, replacement, or modification of equipment that improves the heat rate of the facility, or installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity. [2011 c 180 § 102. Prior: 2009 c 565 § 54; 2009 c 448 § 1; 2007 c 307 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Purpose—2011 c 180: "(1) The legislature finds that generating electricity from the combustion of coal produces pollutants that are harmful to human health and safety and the environment. While the emission of many of these pollutants continues to be addressed through application of federal and state air quality laws, the emission of greenhouse gases resulting from the combustion of coal has not been addressed.

(2) The legislature finds that coal-fired electricity generation is one of the largest sources of greenhouse gas emissions in the state, and is the largest source of such emissions from the generation of electricity in the state.

(3) The legislature finds coal-fired electric generation may provide

baseload power that is necessary in the near-term for the stability and reliability of the electrical transmission grid and that contributes to the availability of affordable power in the state. The legislature further finds that efforts to transition power to other fuels requires a reasonable period of time to ensure grid stability and to maintain affordable electricity resources.

(4) The legislature finds that coal-fired baseload electric generation facilities are a significant contributor to family-wage jobs and economic health in parts of the state and that transition of these facilities must address the economic future and the preservation of jobs in affected communities.

(5) Therefore, it is the purpose of this act to provide for the reduction of greenhouse gas emissions from large coal-fired baseload electric power generation facilities, to effect an orderly transition to cleaner fuels in a manner that ensures reliability of the state's electrical grid, to ensure appropriate cleanup and site restoration upon decommissioning of any of these facilities in the state, and to provide assistance to host communities planning for new economic development and mitigating the economic impacts of the closure of these facilities." [2011 c 180 § 101.]

80.80.040 Greenhouse gas emissions performance standards—Rules—Sequestration. (1) Beginning July 1, 2008, the greenhouse gas emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments on or after such date is the lower of:

(a) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(b) The average available greenhouse gas emissions output as determined under RCW 80.80.050.

(2) This chapter does not apply to long-term financial commitments with the Bonneville power administration.

(3)(a) Except as provided in (c) of this subsection, all baseload electric generation facilities in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section until the facilities are the subject of long-term financial commitments.

(b) All baseload electric generation that commences operation after June 30, 2008, and is located in Washington, must comply with the greenhouse gas emissions performance standard established in subsection (1) of this section.

(c)(i) A coal-fired baseload electric generation facility in Washington that emitted more than one million tons of greenhouse gases in any calendar year prior to 2008 must comply with the lower of the following greenhouse gas emissions performance standard such that one generating boiler is in compliance by December 31, 2020, and any other generating boiler is in compliance by December 31, 2025:

(A) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(B) The average available greenhouse gas emissions output as determined under RCW 80.80.050.

(ii) This subsection (3)(c) does not apply to a coal-fired baseload electric generating [generation] facility in the event the department determines as a requirement of state or federal law or regulation that selective catalytic reduction technology must be installed on any of its boilers.

(4) All electric generation facilities or power plants powered exclusively by renewable resources, as defined in RCW 19.280.020, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section.

(5) All cogeneration facilities in the state that are fueled by natural gas or waste gas or a combination of the two fuels, and that are in operation as of June 30, 2008, are deemed to

be in compliance with the greenhouse gas emissions performance standard established under this section until the facilities are the subject of a new ownership interest or are upgraded.

(6) In determining the rate of emissions of greenhouse gases for baseload electric generation, the total emissions associated with producing electricity shall be included.

(7) In no case shall a long-term financial commitment be determined to be in compliance with the greenhouse gas emissions performance standard if the commitment includes more than twelve percent of electricity from unspecified sources.

(8) For a long-term financial commitment with multiple power plants, each specified power plant must be treated individually for the purpose of determining the annualized plant capacity factor and net emissions, and each power plant must comply with subsection (1) of this section, except as provided in subsections (3) through (5) of this section.

(9) The department shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for a cogeneration facility recognizes the total usable energy output of the process, and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy. In developing and implementing the greenhouse gas emissions performance standard, the department shall consider and act in a manner consistent with any rules adopted pursuant to the public utilities regulatory policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(10) The following greenhouse gas emissions produced by baseload electric generation owned or contracted through a long-term financial commitment shall not be counted as emissions of the power plant in determining compliance with the greenhouse gas emissions performance standard:

(a) Those emissions that are injected permanently in geological formations;

(b) Those emissions that are permanently sequestered by other means approved by the department; and

(c) Those emissions sequestered or mitigated as approved under subsection (16) of this section.

(11) In adopting and implementing the greenhouse gas emissions performance standard, the department of commerce energy policy division, in consultation with the commission, the department, the Bonneville power administration, the western electricity coordinating council, the energy facility site evaluation council, electric utilities, public interest representatives, and consumer representatives, shall consider the effects of the greenhouse gas emissions performance standard on system reliability and overall costs to electricity customers.

(12) In developing and implementing the greenhouse gas emissions performance standard, the department shall, with assistance of the commission, the department of commerce energy policy division, and electric utilities, and to the extent practicable, address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.

(13) The directors of the energy facility site evaluation council and the department shall each adopt rules under chapter 34.05 RCW in coordination with each other to implement and enforce the greenhouse gas emissions performance standard. The rules necessary to implement this section shall be adopted by June 30, 2008.

(14) In adopting the rules for implementing this section, the energy facility site evaluation council and the department shall include criteria to be applied in evaluating the carbon sequestration plan, for baseload electric generation that will rely on subsection (10) of this section to demonstrate compliance, but that will commence sequestration after the date that electricity is first produced. The rules shall include but not be limited to:

(a) Provisions for financial assurances, as a condition of plant operation, sufficient to ensure successful implementation of the carbon sequestration plan, including construction and operation of necessary equipment, and any other significant costs;

(b) Provisions for geological or other approved sequestration commencing within five years of plant operation, including full and sufficient technical documentation to support the planned sequestration;

(c) Provisions for monitoring the effectiveness of the implementation of the sequestration plan;

(d) Penalties for failure to achieve implementation of the plan on schedule;

(e) Provisions for an owner to purchase emissions reductions in the event of the failure of a sequestration plan under subsection (16) of this section; and

(f) Provisions for public notice and comment on the carbon sequestration plan.

(15)(a) Except as provided in (b) of this subsection, as part of its role enforcing the greenhouse gas emissions performance standard, the department shall determine whether sequestration or a plan for sequestration will provide safe, reliable, and permanent protection against the greenhouse gases entering the atmosphere from the power plant and all ancillary facilities.

(b) For facilities under its jurisdiction, the energy facility site evaluation council shall contract for review of sequestration or the carbon sequestration plan with the department consistent with the conditions under (a) of this subsection, consider the adequacy of sequestration or the plan in its adjudicative proceedings conducted under RCW 80.50.090(3), and incorporate specific findings regarding adequacy in its recommendation to the governor under RCW 80.50.100.

(16) A project under consideration by the energy facility site evaluation council by July 22, 2007, is required to include all of the requirements of subsection (14) of this section in its carbon sequestration plan submitted as part of the energy facility site evaluation council process. A project under consideration by the energy facility site evaluation council by July 22, 2007, that receives final site certification agreement approval under chapter 80.50 RCW shall make a good faith effort to implement the sequestration plan. If the project owner determines that implementation is not feasible, the project owner shall submit documentation of that determination to the energy facility site evaluation council. The documentation shall demonstrate the steps taken to implement the sequestration plan and evidence of the technological and economic barriers to successful implementation. The project owner shall then provide to the energy facility site evaluation council notification that they shall implement the plan that requires the project owner to meet the greenhouse gas emissions performance standard by purchasing verifiable greenhouse gas emissions reductions from an electric gener-

ation facility located within the western interconnection, where the reduction would not have occurred otherwise or absent this contractual agreement, such that the sum of the emissions reductions purchased and the facility's emissions meets the standard for the life of the facility. [2011 c 180 § 103; 2009 c 448 § 2; 2007 c 307 § 5.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

80.80.060 Electrical companies—Baseload electric generation—Long-term financial commitments—Rules.

(1) No electrical company may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gas emissions performance standard established under RCW 80.80.040.

(2) In order to enforce the requirements of this chapter, the commission shall review in a general rate case or as provided in subsection (5) of this section any long-term financial commitment entered into by an electrical company after June 30, 2008, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gas emissions performance standard established under RCW 80.80.040.

(3) In determining whether a long-term financial commitment is for baseload electric generation, the commission shall consider the design of the power plant and its intended use, based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the commission determines is relevant under the circumstances.

(4) Upon application by an electric utility, the commission may provide a case-by-case exemption from the greenhouse gas emissions performance standard to address: (a) Unanticipated electric system reliability needs; (b) extraordinary cost impacts on utility ratepayers; or (c) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) Upon application by an electrical company, the commission shall determine whether the company's proposed decision to acquire electric generation or enter into a power purchase agreement for electricity complies with the greenhouse gas emissions performance standard established under RCW 80.80.040. The commission shall not decide in a proceeding under this subsection (5) issues involving the actual costs to construct and operate the selected resource, cost recovery, or other issues reserved by the commission for decision in a general rate case or other proceeding for recovery of the resource or contract costs.

(6) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with a long-term financial commitment, including operating and maintenance costs, depreciation, taxes, and cost of invested capital. The deferral begins with the date on which the power plant begins commercial operation or the effective date of the power purchase agreement and continues for a period not to exceed twenty-four months; provided that if during such period the company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such proceeding. Creation of such a deferral account does

not by itself determine the actual costs of the long-term financial commitment, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding for recovery of these costs. For the purpose of this subsection (6) only, the term "long-term financial commitment" also includes an electric company's ownership or power purchase agreement with a term of five or more years associated with an eligible renewable resource as defined in RCW 19.285.030.

(7) The commission shall consult with the department to apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040. The department shall report to the commission whether baseload electric generation will comply with the greenhouse gas emissions performance standard for the duration of the period the baseload electric generation is supplied to the electrical company.

(8) The commission shall adopt rules for the enforcement of this section with respect to electrical companies and adopt procedural rules for approving costs incurred by an electrical company under subsection (4) of this section.

(9) This section does not apply to a long-term financial commitment for the purchase of coal transition power with termination dates consistent with the applicable dates in RCW 80.80.040(3)(c).

(10) The commission shall adopt rules necessary to implement this section by December 31, 2008. [2011 c 180 § 104. Prior: 2009 c 448 § 3; 2009 c 147 § 1; 2007 c 307 § 8.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

80.80.070 Consumer-owned utilities—Baseload electric generation—Long-term financial commitments. (1) No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gas emissions performance standard established under RCW 80.80.040.

(2) The governing board shall review and make a determination on any long-term financial commitment by the utility, pursuant to this chapter and after consultation with the department, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gas emissions performance standard established under RCW 80.80.040. No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gas emissions performance standard established under RCW 80.80.040.

(3) In confirming that a long-term financial commitment is for baseload electric generation, the governing board shall consider the design of the power plant and the intended use of the power plant based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the governing board determines is relevant under the circumstances.

(4) The governing board may provide a case-by-case exemption from the greenhouse gas emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of signifi-

cant financial harm that may arise from unforeseen circumstances.

(5) The governing board shall apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040, and may request assistance from the department in doing so.

(6) For consumer-owned utilities, the auditor is responsible for auditing compliance with this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance.

(7) This section does not apply to long-term financial commitments for the purchase of coal transition power with termination dates consistent with the applicable dates in RCW 80.80.040(3)(c). [2011 c 180 § 105; 2007 c 307 § 9.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

80.80.100 Memorandum of agreement with owners of a coal-fired baseload facility—Required provisions.

(1) By January 1, 2012, the governor on behalf of the state shall enter into a memorandum of agreement that takes effect on April 1, 2012, with the owners of a coal-fired baseload facility in Washington that emitted more than one million tons of greenhouse gases in any calendar year prior to 2008. The memorandum of agreement entered into by the governor may only contain provisions authorized in this section, except as provided under RCW 80.80.120.

(2) The memorandum of agreement must:

(a) Incorporate by reference RCW 80.80.040, 80.80.060, and 80.80.070 as of July 22, 2011;

(b) Incorporate binding commitments to install selective noncatalytic reduction pollution control technology in any coal-fired generating boilers by January 1, 2013, after discussing the proper use of ammonia in this technology.

(3)(a) The memorandum of agreement must include provisions by which the facility owner will provide financial assistance:

(i) To the affected community for economic development and energy efficiency and weatherization; and

(ii) For energy technologies with the potential to create considerable energy, economic development, and air quality, haze, or other environmental benefits.

(b) Except as described in (c) of this subsection, the financial assistance in (a)(i) of this subsection must be in the amount of thirty million dollars and the financial assistance in (a)(ii) of this subsection must be in the amount of twenty-five million dollars, with investments beginning January 1, 2012, and consisting of equal annual investments through December 31, 2023, or until the full amount has been provided. Only funds for energy efficiency and weatherization may be spent prior to December 31, 2015.

(c) If the tax exemptions provided under RCW 82.08.811 or 82.12.811 are repealed, any remaining financial assistance required by this section is no longer required.

(4) The memorandum of agreement must:

(a) Specify that the investments in subsection (3) of this section be held in independent accounts at an appropriate financial institution; and

(b) Identify individuals to approve expenditures from the accounts. Individuals must have relevant expertise and must

include members representing the Lewis county economic development council, local elected officials, employees at the facility, and the facility owner.

(5) The memorandum of agreement must include a provision that allows for the termination of the memorandum of agreement in the event the department determines as a requirement of state or federal law or regulation that selective catalytic reduction technology must be installed on any of its boilers.

(6) The memorandum of agreement must include enforcement provisions to ensure implementation of the agreement by the parties.

(7) If the memorandum of agreement is not signed by January 1, 2012, the governor must impose requirements consistent with the provisions in subsection (2)(b) of this section. [2011 c 180 § 106.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

80.80.110 Limitation on adopting or imposing a greenhouse gas emission performance standard on certain facilities. No state agency or political subdivision of the state may adopt or impose a greenhouse gas emission performance standard, or other operating or financial requirement or limitation relating to greenhouse gas emissions, on a coal-fired electric generation facility located in Washington in operation on or before July 22, 2011, or upon an electric utility's long-term purchase of coal transition power, that is inconsistent with or in addition to the provisions of RCW 80.80.040 or the memorandum of agreement entered into under RCW 80.80.100. [2011 c 180 § 107.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

80.80.120 Memorandum of agreement—Authorized provisions. (1) A memorandum of agreement entered into pursuant to RCW 80.80.100 may include provisions to assist in the financing of emissions reductions that exceed those required by RCW 80.80.040(3)(c) by providing for the recognition of such reductions in applicable state policies and programs relating to greenhouse gas emissions, and by encouraging and advocating for the recognition of the reductions in all established and emerging emission reduction frameworks at the regional, national, or international level.

(2) The governor may recommend actions to the legislature to strengthen implementation of an agreement or a proposed agreement relating to recognition of investments in emissions reductions described in subsection (1) of this section. [2011 c 180 § 108.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

Chapter 80.82 RCW

CLOSURE OF COAL-FIRED ELECTRIC GENERATION FACILITIES

Sections

80.82.010	Closure and postclosure plans for certain facilities.
80.82.020	Guarantee of funds to perform activities specified in a decommissioning plan—Letter of credit.

80.82.010 Closure and postclosure plans for certain facilities. (1) A facility subject to closure under either RCW 80.80.040(3)(c) or a memorandum of agreement under RCW 80.80.100, or both, must provide the department of ecology with a plan for the closure and postclosure of the facility at least twenty-four months prior to facility closure or twenty-four months prior to start of decommissioning work, whichever is earlier. This plan must be consistent with the rules established by the energy facility site evaluation council for site restoration and preservation applicable to facilities subject to a site certification agreement under chapter 80.50 RCW and include but not be limited to:

(a) A detailed estimate of the cost to implement the plan based on the cost of hiring a third party to conduct all activities;

(b) Demonstrating financial assurance to fund the closure and postclosure of the facility and providing methods by which this assurance may be demonstrated;

(c) Methods for estimating closure costs, including full site reclamation under all applicable federal and state clean-up standards; and

(d) A decommissioning and site restoration plan that addresses restoring physical topography, cleanup of all hazardous substances on the site, potential future uses of the site following restoration, and coordination with local and community plans for economic development in the vicinity of the site.

(2) All cost estimates in the plan must be in current dollars and may not include a net present value adjustment or offsets for salvage value of wastes or other property.

(3) Adoption of the plan and significant revisions to the plan must be approved by the department of ecology. [2011 c 180 § 201.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

80.82.020 Guarantee of funds to perform activities specified in a decommissioning plan—Letter of credit. (1) A facility subject to closure under either RCW 80.80.040(3)(c) or a memorandum of agreement under RCW 80.80.100, or both, must guarantee funds are available to perform all activities specified in the decommissioning plan developed under RCW 80.82.010. The amount must equal the cost estimates specified in the decommissioning plan and must be updated annually for inflation. All guarantees under this section must be assumed by any successor owner, parent company, or holding company.

(2) The guarantee required under subsection (1) of this section may be accomplished by letter of credit, surety bond, or other means acceptable to the department of ecology.

(3) The issuing institution of the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated by a federal or state agency. The surety company issuing a surety bond must, at a minimum, be an entity listed as an acceptable surety on federal bonds in circular 570, published by the United States department of the treasury.

(4) A qualifying facility that uses a letter of credit or a surety bond to satisfy the requirements of chapter 180, Laws of 2011 must also establish a standby trust fund as a means to hold any funds issued from the letter of credit or a surety

bond. Under the terms of the letter of credit or a surety bond, all amounts paid pursuant to a draft from the department of ecology must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the department of ecology. This standby trust fund must be approved by the department of ecology.

(5) The letter of credit or a surety bond must be irrevocable and issued for a period of at least one year. The letter of credit or a surety bond must provide that the expiration date will be automatically extended for a period of at least one year unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies both the qualifying facility and the department of ecology of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when both the qualifying plant and the department of ecology have received the notice, as evidenced by certified mail return receipts or by overnight courier delivery receipts.

(6) If the qualifying facility does not establish an alternative method of guaranteeing decommissioning funds are available within ninety days after receipt by both the qualifying facility plant and the department of ecology of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the department of ecology must draw on the letter of credit or a surety bond. The department of ecology must approve any replacement or substitute guarantee method before the expiration of the ninety-day period.

(7) If a qualifying facility elects to use a letter of credit as the sole method for guaranteeing decommissioning funds are available, the face value of the letter of credit must meet or exceed the current inflation-adjusted cost estimate. If a qualifying facility elects to use a surety bond as the sole method for guaranteeing decommissioning funds are available, the penal sum of the surety bond must meet or exceed the current inflation-adjusted cost estimate.

(8) A qualifying facility must adjust the decommissioning costs and financial guarantees annually for inflation and may use an amendment to increase the face value of a letter of credit or a surety bond each year to account for this inflation. A qualifying facility is not required to obtain a new letter of credit or a surety bond to cover annual inflation adjustments. [2011 c 180 § 202.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

Title 81

TRANSPORTATION

Chapters

- 81.72** Taxicab companies.
- 81.104** High capacity transportation systems.

**Chapter 81.72 RCW
TAXICAB COMPANIES**

Sections

- 81.72.230 License suspension or revocation—Failure to pay industrial insurance premiums—Rules—Cooperative agreements. (Effective January 1, 2012.)

- 81.72.240 Rate adjustments—Industrial insurance, other costs—Requirement to train for hire operator. (Effective January 1, 2012.)

81.72.230 License suspension or revocation—Failure to pay industrial insurance premiums—Rules—Cooperative agreements. (Effective January 1, 2012.) (1) A license issued pursuant to this chapter must be suspended or revoked and may not be renewed in the event of failure to pay the mandatory for hire vehicle operator industrial insurance premium as charged by the department of labor and industries under RCW 51.12.183 and 51.16.240.

(2)(a) A taxicab vehicle and its operator must have evidence of payment in good standing with the department of labor and industries of the for hire vehicle operator industrial insurance premium, whenever the taxicab vehicle is operated on public streets and highways for compensation.

(b) Failure to produce evidence of payment of the for hire vehicle insurance premium upon demand by a law enforcement officer or other government agent acting under the authority of this chapter is a civil infraction punishable by a fine of not more than two hundred fifty dollars per infraction separately upon both the taxicab vehicle owner and the taxicab vehicle operator if they are not one and the same.

(3) Taxicab vehicle license suspension or revocation and the administration thereof for failure to pay the mandatory industrial insurance premium must be at the direction and expense of the department of labor and industries.

(4)(a) The department of labor and industries, the department of licensing, cities, towns, counties, and port districts may enter into cooperative agreements to implement this section.

(b) The department of licensing and the department of labor and industries may adopt rules to implement this section.

(c) Cities, towns, counties, and port districts may take legislative action to implement this section. [2011 c 190 § 7.]

Effective date—2011 c 190: See note following RCW 51.12.180.

81.72.240 Rate adjustments—Industrial insurance, other costs—Requirement to train for hire operator. (Effective January 1, 2012.) (1) Any city, town, county, or port district setting the rates charged for taxicab services under this chapter must adjust rates to accommodate changes in the cost of industrial insurance or in other industry-wide costs.

(2) Any business that as owner leases a taxicab licensed under this chapter to a for hire operator must make a reasonable effort to train the for hire operator in motor vehicle operation and safety requirements and monitor operator compliance. Monitoring operator compliance may include the use of vehicle operator monitoring cameras. [2011 c 190 § 8.]

Effective date—2011 c 190: See note following RCW 51.12.180.

Chapter 81.104 RCW

HIGH CAPACITY TRANSPORTATION SYSTEMS

Sections

- 81.104.100 Planning process.
- 81.104.110 Independent system plan oversight.

81.104.100 Planning process. To assure development of an effective high capacity transportation system, local authorities shall follow the following planning process only if their system plan includes a rail fixed guideway system component or a bus rapid transit component that is planned by a regional transit authority:

(1) Regional, multimodal transportation planning is the ongoing urban transportation planning process conducted in each urbanized area by its regional transportation planning organization. During this process, regional transportation goals are identified, travel patterns are analyzed, and future land use and travel are projected. The process provides a comprehensive view of the region's transportation needs but does not select specified modes to serve those needs. The process shall identify a priority corridor or corridors for further study of high capacity transportation facilities if it is deemed feasible by local officials.

(2) High capacity transportation system planning is the detailed evaluation of a range of high capacity transportation system options, including: Do nothing, low capital, and ranges of higher capital facilities. To the extent possible this evaluation shall take into account the urban mass transportation administration's requirements identified in subsection (3) of this section.

High capacity transportation system planning shall proceed as follows:

(a) Organization and management. The responsible local transit agency or agencies shall define roles for various local agencies, review background information, provide for public involvement, and develop a detailed work plan for the system planning process.

(b) Development of options. Options to be studied shall be developed to ensure an appropriate range of technologies and service policies can be evaluated. A do-nothing option and a low capital option that maximizes the current system shall be developed. Several higher capital options that consider a range of capital expenditures for several candidate technologies shall be developed.

(c) Analysis methods. The local transit agency shall develop reports describing the analysis and assumptions for the estimation of capital costs, operating and maintenance costs, methods for travel forecasting, a financial plan and an evaluation methodology.

(d) The system plan submitted to the voters pursuant to RCW 81.104.140 shall address, but is not limited to the following issues:

(i) Identification of level and types of high capacity transportation services to be provided;

(ii) A plan of high occupancy vehicle lanes to be constructed;

(iii) Identification of route alignments and station locations with sufficient specificity to permit calculation of costs, ridership, and system impacts;

(iv) Performance characteristics of technologies in the system plan;

(v) Patronage forecasts;

(vi) A financing plan describing: Phasing of investments; capital and operating costs and expected revenues; cost-effectiveness represented by a total cost per system rider and new rider estimate; estimated ridership and the cost of

service for each individual high capacity line; and identification of the operating revenue to operating expense ratio.

The financing plan shall specifically differentiate the proposed use of funds between high capacity transportation facilities and services, and high occupancy vehicle facilities;

(vii) Description of the relationship between the high capacity transportation system plan and adopted land use plans;

(viii) An assessment of social, economic, and environmental impacts; and

(ix) Mobility characteristics of the system presented, including but not limited to: Qualitative description of system/service philosophy and impacts; qualitative system reliability; travel time and number of transfers between selected residential, employment, and activity centers; and system and activity center mode splits.

(3) High capacity transportation project planning is the detailed identification of alignments, station locations, equipment and systems, construction schedules, environmental effects, and costs. High capacity transportation project planning shall proceed as follows: The local transit agency shall analyze and produce information needed for the preparation of environmental impact statements. The impact statements shall address the impact that development of such a system will have on abutting or nearby property owners. The process of identification of alignments and station locations shall include notification of affected property owners by normal legal publication. At minimum, such notification shall include notice on the same day for at least three weeks in at least two newspapers of general circulation in the county where such project is proposed. Special notice of hearings by the conspicuous posting of notice, in a manner designed to attract public attention, in the vicinity of areas identified for station locations or transfer sites shall also be provided.

In order to increase the likelihood of future federal funding, the project planning processes shall follow the urban mass transportation administration's requirements as described in "Procedures and Technical Methods for Transit Project Planning", published by the United States department of transportation, urban mass transportation administration, September 1986, or the most recent edition. Nothing in this subsection shall be construed to preclude detailed evaluation of more than one corridor in the planning process.

The department of transportation shall provide system and project planning review and monitoring in cooperation with the expert review panel identified in RCW 81.104.110. In addition, the local transit agency shall maintain a continuous public involvement program and seek involvement of other government agencies. [2011 c 127 § 1; 1992 c 101 § 23; 1991 sp.s. c 15 § 68; 1991 c 318 § 9; 1990 c 43 § 31.]

Additional notes found at www.leg.wa.gov

81.104.110 Independent system plan oversight. (1) The legislature recognizes that the planning processes described in RCW 81.104.100 provide a recognized framework for guiding high capacity transportation studies. However, the process cannot guarantee appropriate decisions unless key study assumptions are reasonable.

(2) To assure appropriate system plan assumptions and to provide for review of system plan results, an expert review

panel shall be appointed to provide independent technical review for development of any system plan which:

(a) Is to be funded in whole or in part by the imposition of any voter-approved local option funding sources enumerated in RCW 81.104.140; and

(b) Includes a rail fixed guideway system component or a bus rapid transit component that is planned by a regional transit authority.

(3) The expert review panel shall consist of five to ten members who are recognized experts in relevant fields, such as transit operations, planning, emerging transportation technologies, engineering, finance, law, the environment, geography, economics, and political science.

(4) The expert review panel shall be selected cooperatively by the chairs of the senate and house transportation committees, the secretary of the department of transportation, and the governor to assure a balance of disciplines. In the case of counties adjoining another state or Canadian province the expert review panel membership shall be selected cooperatively with representatives of the adjoining state or Canadian province.

(5) The chair of the expert review panel shall be designated by the appointing authorities.

(6) The expert review panel shall serve without compensation but shall be reimbursed for expenses according to RCW 43.03.050 and 43.03.060. Reimbursement shall be paid from within the existing resources of the local authority planning under this chapter.

(7) The panel shall carry out the duties set forth in subsections (8) and (9) of this section until the date on which an election is held to consider the high capacity transportation system and financing plans.

(8) The expert panel shall review all reports required in RCW 81.104.100(2) and shall concentrate on service modes and concepts, costs, patronage and financing evaluations.

(9) The expert panel shall provide timely reviews and comments on individual reports and study conclusions to the department of transportation, the regional transportation planning organization, the joint regional policy committee, and the submitting lead transit agency. In the case of counties adjoining another state or Canadian province, the expert review panel shall provide its reviews, comments, and conclusions to the representatives of the adjoining state or Canadian province.

(10) The local authority planning under this chapter shall contract for consulting services for expert review panels. The amount of consultant support shall be negotiated with each expert review panel by the local authority and shall be paid from within the local authority's existing resources. [2011 c 127 § 2; 2005 c 319 § 136; 1998 c 245 § 165. Prior: 1991 c 318 § 10; 1991 c 309 § 3; 1990 c 43 § 32.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Title 82

EXCISE TAXES

Chapters

82.01 Department of revenue.

82.02 General provisions.

82.04 Business and occupation tax.

82.08 Retail sales tax.

82.12 Use tax.

82.14 Local retail sales and use taxes.

82.16 Public utility tax.

82.18 Solid waste collection tax.

82.24 Tax on cigarettes.

82.32 General administrative provisions.

82.36 Motor vehicle fuel tax.

82.45 Excise tax on real estate sales.

82.46 Counties and cities—Excise tax on real estate sales.

82.50 Travel trailers and campers excise tax.

82.80 Local option transportation taxes.

82.83 Carbonated beverage tax.

Chapter 82.01 RCW

DEPARTMENT OF REVENUE

Sections

82.01.060 Director—Powers and duties—Rule-making authority.

82.01.060 Director—Powers and duties—Rule-making authority. The director of revenue, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the director, through the department of revenue, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the department, must:

(1) Assess and collect all taxes and administer all programs relating to taxes which are the responsibility of the tax commission at the time chapter 26, Laws of 1967 ex. sess. takes effect or which the legislature may hereafter make the responsibility of the director or of the department;

(2) Make, adopt and publish such rules as he or she may deem necessary or desirable to carry out the powers and duties imposed upon him or her or the department by the legislature. However, the director may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule;

(3) Rules adopted by the tax commission before July 23, 1995, remain in force until such time as they may be revised or rescinded by the director;

(4) Provide by general regulations for an adequate system of departmental review of the actions of the department or of its officers and employees in the assessment or collection of taxes;

(5) Maintain a tax research section with sufficient technical, clerical and other employees to conduct constant observation and investigation of the effectiveness and adequacy of the revenue laws of this state and of the sister states in order to assist the governor, the legislature and the director in estimation of revenue, analysis of tax measures, and determination of the administrative feasibility of proposed tax legislation and allied problems;

(6) Recommend to the governor such amendments, changes in, and modifications of the revenue laws as seem proper and requisite to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of taxes in the most economical manner;

(7) Provide the opportunity for any person feeling aggrieved by any action taken against the person by the

department in the administration of chapters 19.02, 19.80, and 59.30 RCW to request a review of the department's action. Such review may be conducted as a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494. [2011 c 298 § 36; 1995 c 403 § 106; 1977 c 75 § 92; 1967 ex.s. c 26 § 3.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Additional notes found at www.leg.wa.gov

Chapter 82.02 RCW GENERAL PROVISIONS

Sections

82.02.010	Definitions.
82.02.070	Impact fees—Retained in special accounts—Limitations on use—Administrative appeals.
82.02.080	Impact fees—Refunds.
82.02.100	Impact fees—Exception, mitigation fees paid under chapter 43.21C RCW.

82.02.010 Definitions. For the purpose of this title, unless the context clearly requires otherwise:

(1) "Department" means the department of revenue of the state of Washington;

(2) "Director" means the director of the department of revenue of the state of Washington;

(3) "Taxpayer" includes any individual, group of individuals, corporation, or association liable for any tax or the collection of any tax hereunder, or who engages in any business or performs any act for which a tax is imposed by this title. "Taxpayer" also includes any person liable for any fee or other charge collected by the department under any provision of law, including registration assessments and delinquency fees imposed under RCW 59.30.050; and

(4) Words in the singular number include the plural and the plural include the singular. Words in one gender include all other genders. [2011 c 298 § 37; 1979 c 107 § 9; 1967 ex.s. c 26 § 14; 1961 c 15 § 82.02.010. Prior: 1935 c 180 § 3; RRS § 8370-3.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Additional notes found at www.leg.wa.gov

82.02.070 Impact fees—Retained in special accounts—Limitations on use—Administrative appeals.

(1) Impact fee receipts shall be earmarked specifically and retained in special interest-bearing accounts. Separate accounts shall be established for each type of public facility for which impact fees are collected. All interest shall be retained in the account and expended for the purpose or purposes for which the impact fees were imposed. Annually, each county, city, or town imposing impact fees shall provide a report on each impact fee account showing the source and amount of all moneys collected, earned, or received and system improvements that were financed in whole or in part by impact fees.

(2) Impact fees for system improvements shall be expended only in conformance with the capital facilities plan element of the comprehensive plan.

(3)(a) Except as provided otherwise by (b) of this subsection, impact fees shall be expended or encumbered for a permissible use within ten years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than ten years. Such extraordinary or compelling reasons shall be identified in written findings by the governing body of the county, city, or town.

(b) School impact fees must be expended or encumbered for a permissible use within ten years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than ten years. Such extraordinary or compelling reasons shall be identified in written findings by the governing body of the county, city, or town.

(4) Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.

(5) Each county, city, or town that imposes impact fees shall provide for an administrative appeals process for the appeal of an impact fee; the process may follow the appeal process for the underlying development approval or the county, city, or town may establish a separate appeals process. The impact fee may be modified upon a determination that it is proper to do so based on principles of fairness. The county, city, or town may provide for the resolution of disputes regarding impact fees by arbitration. [2011 c 353 § 8; 2009 c 263 § 1; 1990 1st ex.s. c 17 § 46.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Additional notes found at www.leg.wa.gov

82.02.080 Impact fees—Refunds. (1) The current owner of property on which an impact fee has been paid may receive a refund of such fees if the county, city, or town fails to expend or encumber the impact fees within ten years of when the fees were paid or other such period of time established pursuant to RCW 82.02.070(3) on public facilities intended to benefit the development activity for which the impact fees were paid. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. The county, city, or town shall notify potential claimants by first-class mail deposited with the United States postal service at the last known address of claimants.

The request for a refund must be submitted to the county, city, or town governing body in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever is later. Any impact fees that are not expended within these time limitations, and for which no application for a refund has been made within this one-year period, shall be retained and expended on the indicated capital facilities. Refunds of impact fees under this subsection shall include interest earned on the impact fees.

(2) When a county, city, or town seeks to terminate any or all impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded pursuant to this section. Upon the finding that any or all fee requirements are to be terminated, the county, city, or town shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first-class mail to the last known address of claimants. All funds available for refund shall be retained for a period of one year. At

the end of one year, any remaining funds shall be retained by the local government, but must be expended for the indicated public facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within an account or accounts being terminated.

(3) A developer may request and shall receive a refund, including interest earned on the impact fees, when the developer does not proceed with the development activity and no impact has resulted. [2011 c 353 § 9; 1990 1st ex.s. c 17 § 47.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Additional notes found at www.leg.wa.gov

82.02.100 Impact fees—Exception, mitigation fees paid under chapter 43.21C RCW. (1) A person required to pay a fee pursuant to RCW 43.21C.060 for system improvements shall not be required to pay an impact fee under RCW 82.02.050 through 82.02.090 for those same system improvements.

(2) A person installing a residential fire sprinkler system in a single-family home shall not be required to pay the fire operations portion of the impact fee. The exempted fire operations impact fee shall not include the proportionate share related to the delivery of emergency medical services. [2011 c 331 § 3; 1992 c 219 § 2.]

Intent—2011 c 331: "The legislature recognizes that fire sprinkler systems in private residences may prevent catastrophic losses of life and property, but that financial, technical, and other issues often discourage property owners from installing these protective systems.

It is the intent of the legislature to eradicate barriers that prevent the voluntary installation of sprinkler systems in private residences by promoting education regarding the effectiveness of residential fire sprinklers, and by providing financial and regulatory incentives to homeowners, builders, and water purveyors for voluntarily installing the systems. It is the further intent of the legislature to fully preserve the rulings of *Fisk v. City of Kirkland*, 164 Wn.2d 891 (2008), *Stiefel v. City of Kent*, 132 Wn. App.523 (2006), and similar cases." [2011 c 331 § 1.]

Chapter 82.04 RCW

BUSINESS AND OCCUPATION TAX

Sections

82.04.050	"Sale at retail," "retail sale."
82.04.120	"To manufacture."
82.04.220	Business and occupation tax imposed.
82.04.255	Tax on real estate brokers.
82.04.264	Repealed.
82.04.290	Tax on international investment management services or other business or service activities.
82.04.2909	Tax on aluminum smelters. (<i>Expires January 1, 2017.</i>)
82.04.294	Tax on manufacturers or wholesalers of solar energy systems. (<i>Expires June 30, 2014.</i>)
82.04.333	Exemptions—Small harvesters.
82.04.394	Repealed.
82.04.4274	Deductions—Nonprofit management companies—Personnel performing on-site functions.
82.04.4275	Deductions—Child welfare services.
82.04.4277	Deductions—Health and social welfare organizations—Mental health services. (<i>Expires August 1, 2016.</i>)
82.04.4297	Deductions—Compensation from public entities for health or social welfare services—Exception.
82.04.431	"Health or social welfare organization" defined—Conditions for exemption—"Health or social welfare services" defined.
82.04.4481	Credit—Property taxes paid by aluminum smelter.
82.04.4495	Repealed.
82.04.460	Apportionable income—Taxable in Washington and another state.
82.04.645	Exemptions—Financial institutions—Amounts received from certain affiliated persons.
82.04.655	Exemptions—Joint municipal utility services authorities.

82.04.750 Exemptions—Restaurant employee meals.

82.04.050 "Sale at retail," "retail sale." (1)(a) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who:

(i) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(ii) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(iii) Purchases for the purpose of consuming the property purchased in producing for sale as a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(iv) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(v) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065; or

(vi) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(b) The term includes every sale of tangible personal property that is used or consumed or to be used or consumed in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property is resold or used as provided in (a)(i) through (vi) of this subsection following such use.

(c) The term also means every sale of tangible personal property to persons engaged in any business that is taxable under RCW 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

(2) The term "sale at retail" or "retail sale" includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and exclud-

ing services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and also includes the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but does not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" means those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it is presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection may be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section may be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however desig-

nated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term also includes the renting or leasing of tangible personal property to consumers.

(b) The term does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6)(a) The term also includes the sale of prewritten computer software to a consumer, regardless of the method of delivery to the end user. For purposes of this subsection (6)(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

The term "retail sale" does not include the sale of or charge made for:

(i) Custom software; or

(ii) The customization of prewritten computer software.

(b)(i) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(ii)(A) The service described in (b)(i) of this subsection (6) includes the right to access and use prewritten computer software to perform data processing.

(B) For purposes of this subsection (6)(b)(ii), "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

(7) The term also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:

(i) Sales in which the seller has granted the purchaser the right of permanent use;

(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection (8) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(9) The term also includes the charge made for providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (9), an operator must do more than maintain, inspect, or set up the tangible personal property.

(10) The term does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(11) The term also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmen-

tal quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(12) The term does not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development.

(13) The term does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services.

(14) The term does not include the sale for resale of any service described in this section if the sale would otherwise constitute a "sale at retail" and "retail sale" under this section. [2011 c 174 § 202. Prior: 2010 c 112 § 14; 2010 c 111 § 201; 2010 c 106 § 202; prior: 2009 c 563 § 301; 2009 c 535 § 301; prior: 2007 c 54 § 4; 2007 c 6 § 1004; prior: 2005 c 515 § 2; 2005 c 514 § 101; prior: 2004 c 174 § 3; 2004 c 153 § 407; 2003 c 168 § 104; 2002 c 178 § 1; 2000 2nd sp.s. c 4 § 23; prior: 1998 c 332 § 2; 1998 c 315 § 1; 1998 c 308 § 1; 1998 c 275 § 1; 1997 c 127 § 1; prior: 1996 c 148 § 1; 1996 c 112 § 1; 1995 1st sp.s. c 12 § 2; 1995 c 39 § 2; 1993 sp.s. c 25 § 301; 1988 c 253 § 1; prior: 1987 c 285 § 1; 1987 c 23 § 2; 1986 c 231 § 1; 1983 2nd ex.s. c 3 § 25; 1981 c 144 § 3; 1975 1st ex.s. c 291 § 5; 1975 1st ex.s. c 90 § 1; 1973 1st ex.s. c 145 § 1; 1971 ex.s. c 299 § 3; 1971 ex.s. c 281 § 1; 1970 ex.s. c 8 § 1; prior: 1969 ex.s. c 262 § 30; 1969 ex.s. c 255 § 3; 1967 ex.s. c 149 § 4; 1965 ex.s. c 173 § 1; 1963 c 7 § 1; prior: 1961 ex.s. c 24 § 1; 1961 c 293 § 1; 1961 c 15 § 82.04.050; prior: 1959 ex.s. c 5 § 2; 1957 c 279 § 1; 1955 c 389 § 6; 1953 c 91 § 3; 1951 2nd ex.s. c 28 § 3; 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Retroactive application—2010 c 112: See note following RCW 82.32.780.

Purpose—2010 c 111: "The 2009 legislature enacted Engrossed Substitute House Bill No. 2075 (chapter 535, Laws of 2009), an act relating to the excise taxation of certain products and services provided or furnished electronically. The bill took effect July 26, 2009.

Engrossed Substitute House Bill No. 2075, at eighty-five pages, was a comprehensive piece of legislation that made major changes to state and local sales and use taxes, as well as the state business and occupation tax. Moreover, Engrossed Substitute House Bill No. 2075 was a complex piece of legislation because of the intricate interrelationship between the sales tax and the business and occupation tax and also because the bill affects the taxation of products and services that involve technologies that are changing rapidly.

Because of the complexity and length of Engrossed Substitute House Bill No. 2075, it was the legislature's expectation that, in the course of implementing the bill, ambiguities and unintended consequences would be discovered, which, if not corrected, will unsettle expectations. Thus, the legislature further anticipated that it would need to consider legislation in the 2010 legislative session to address these issues.

Therefore, the purpose of this act is to clarify ambiguities, correct unintended consequences, restore expectations, and conform the law to the original intent of the legislature." [2010 c 111 § 101.]

Retroactive application—2010 c 111: "(1) Except as provided in subsection (2) of this section, this act applies both prospectively and retroactively to July 26, 2009.

(2) Sections 202, 402, and 502 of this act, and those provisions of sections 41 and 501 of this act that eliminate the sales and use tax exemptions in RCW 82.08.02082 and 82.12.02082, apply prospectively only." [2010 c 111 § 902.]

Effective date—2010 c 111: "This act takes effect July 1, 2010." [2010 c 111 § 903.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Severability—2007 c 54: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 54 § 32.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Findings—2005 c 515: "The legislature finds that:

(1) Public entities that receive tax dollars must continuously improve the way they operate and deliver service so citizens receive maximum value for their tax dollars; and

(2) An explicit statement clarifying that no sales or use tax shall apply to the entire charge paid by regional transit authorities for bus or rail combined operations and maintenance agreements that are provided to such authorities in support of their provision of urban transportation or transportation services is necessary to improve efficient service." [2005 c 515 § 1.]

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective date—2004 c 174: See note following RCW 82.04.2908.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Retroactive application—Effective date—2002 c 178: See notes following RCW 67.28.180.

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Intent—1995 1st sp.s. c 12: "It is the intent of the legislature that massage services be recognized as health care practitioners for the purposes of business and occupation tax application. To achieve this intent massage services are being removed from the definition of sale at retail and retail sale." [1995 1st sp.s. c 12 § 1.]

[2011 RCW Supp—page 1590]

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

Credit for retail sales or use taxes paid to other jurisdictions with respect to property used: RCW 82.12.035.

"Services rendered in respect to" defined: RCW 82.04.051.

Additional notes found at www.leg.wa.gov

82.04.120 "To manufacture." (1) "To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and includes:

(a) The production or fabrication of special made or custom made articles;

(b) The production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;

(c) Cutting, delimiting, and measuring of felled, cut, or taken trees; and

(d) Crushing and/or blending of rock, sand, stone, gravel, or ore.

(2) "To manufacture" does not include:

(a) Conditioning of seed for use in planting; cubing hay or alfalfa;

(b) Activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state;

(c) The growing, harvesting, or producing of agricultural products;

(d) Packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage;

(e) The production of digital goods;

(f) The production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser; and

(g) Any activity that is integral to any public service business as defined in RCW 82.16.010 and with respect to which the gross income associated with such activity: (i) Is subject to tax under chapter 82.16 RCW; or (ii) would be subject to tax under chapter 82.16 RCW if such activity were conducted in this state or if not for an exemption or deduction.

(3) With respect to wastewater treatment facilities:

(a) "To manufacture" does not include the treatment of wastewater, the production of reclaimed water, and the production of class B biosolids; and

(b) "To manufacture" does include the production of class A or exceptional quality biosolids, but only with respect to the processing activities that occur after the biosolids have reached class B standards. [2011 c 23 § 3; 2009 c 535 § 406; 2003 c 168 § 604; 1999 sp.s. c 9 § 1; 1999 c 211 § 2; 1998 c 168 § 1; 1997 c 384 § 1; 1989 c 302 § 201. Prior: 1989 c 302 § 101; 1987 c 493 § 1; 1982 2nd ex.s. c 9 § 2; 1975 1st ex.s. c 291 § 6; 1965 ex.s. c 173 § 3; 1961 c 15 § 82.04.120; prior: 1959 ex.s. c 3 § 2; 1955 c 389 § 13; prior: 1949 c 228 § 2,

part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Findings—Application—2011 c 23: See notes following RCW 82.08.02565.

Effective date—Construction—2011 c 23: See notes following RCW 82.08.025651.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Intent—1999 sp.s. c 9: "This act is intended to clarify that this is the intent of the legislature both retroactively and prospectively." [1999 sp.s. c 9 § 4.]

Intent—1999 c 211 §§ 2 and 3: "The legislature intends that sections 2 and 3 of this act be clarifying in nature and are retroactive in response to the administrative difficulties encountered in implementing the original legislation." [1999 c 211 § 4.]

Finding—Intent—1999 c 211: See note following RCW 82.08.02565.

Finding—Purpose—1989 c 302: "(1) The legislature finds that chapter 9, Laws of 1982 2nd ex. sess. was intended to extend state public utility taxation to electrical energy generated in this state for eventual distribution outside this state. The legislature further finds that chapter 9, Laws of 1982 2nd ex. sess. was held unconstitutional by the Thurston county superior court in *Washington Water Power v. State of Washington* (memorandum opinion No. 83-2-00977-1). The purpose of *Part I of this act is to recognize the effect of that decision by correcting the relevant RCW sections to read as though the legislature had not enacted chapter 9, Laws of 1982 2nd ex. sess., and thereby make clear the effect of subsequent amendments in *Part II of this act.

(2) The purpose of *Part II of this act is to provide a constitutional means of replacing the revenue lost as a result of the *Washington Water Power* decision." [1989 c 302 § 1.]

***Reviser's note:** For "Part" division see 1989 c 302.

Additional notes found at www.leg.wa.gov

82.04.220 Business and occupation tax imposed. (1)

There is levied and collected from every person that has a substantial nexus with this state a tax for the act or privilege of engaging in business activities. The tax is measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.

(2) A person who has a substantial nexus with this state in any tax year under the provisions of RCW 82.04.067 will be deemed to have a substantial nexus with this state for the following tax year. [2011 1st sp.s. c 20 § 101; 2010 1st sp.s. c 23 § 102; 1961 c 15 § 82.04.220. Prior: 1955 c 389 § 42; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Intent—2010 1st sp.s. c 23: "In order to preserve funding for education, public safety, health care, environmental protection, and safety net services for children, elderly, disabled, and vulnerable people, it is the intent of the legislature to close obsolete tax preferences, clarify the legislature's intent regarding existing tax policy, and to ensure balanced tax policy while bolstering emerging industries." [2010 1st sp.s. c 23 § 1.]

Findings—Intent—2010 1st sp.s. c 23: "(1) The legislature finds that out-of-state businesses that do not have a physical presence in Washington earn significant income from Washington residents from providing services or collecting royalties on the use of intangible property in this state. The legislature further finds that these businesses receive significant benefits and opportunities provided by the state, such as: Laws providing protection of business interests or regulating consumer credit; access to courts and judicial process to enforce business rights, including debt collection and intellectual property rights; an orderly and regulated marketplace; and police and fire protection and a transportation system benefiting in-state agents and other

representatives of out-of-state businesses. Therefore, the legislature intends to extend the state's business and occupation tax to these companies to ensure that they pay their fair share of the cost of services that this state renders and the infrastructure it provides.

(2)(a) The legislature also finds that the current cost apportionment method in RCW 82.04.460(1) for apportioning most service income has been difficult for both taxpayers and the department to apply due in large part (i) to the difficulty in assigning certain costs of doing business inside or outside of this state, and (ii) to its dissimilarity with the apportionment methods used in other states for their business activity taxes.

(b) The legislature further finds that there is a trend among states to adopt a single factor apportionment formula based on sales. The legislature recognizes that adoption of a sales factor only apportionment method has the advantages of simplifying apportionment and making Washington a more attractive place for businesses to expand their property and payroll. For these reasons, the legislature adopts single factor sales apportionment for purposes of apportioning royalty income and certain service income for state business and occupation tax purposes.

(c) Nothing in this act may be construed, however, to authorize apportionment of the gross income or value of products taxable under the following business and occupation tax classifications: Retailing, wholesaling, manufacturing, processing for hire, extracting, extracting for hire, printing, government contracting, public road construction, the classifications in RCW 82.04.280(1) (b), (d), (f), and (g), and any other activity not specifically included in the definition of apportionable activities in RCW 82.04.460.

(d) Nothing in this part is intended to modify the nexus and apportionment requirements for local gross receipts business and occupation taxes." [2011 c 174 § 208; 2010 1st sp.s. c 23 § 101.]

***Reviser's note:** RCW 82.04.280 was amended by 2010 c 106 §§ 205 and 206, changing subsections (2), (4), (6), and (7) to subsection (1)(b), (d), (f), and (g).

Contingency—Application—2010 1st sp.s. c 23 §§ 102-112: See notes following RCW 82.04.067.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

82.04.255 Tax on real estate brokers. (1) Upon every person engaging within the state in the business of providing real estate brokerage services; as to such persons, the amount of the tax with respect to such business is equal to the gross income of the business, multiplied by the rate of 1.5 percent.

(2) The measure of the tax on real estate commissions earned by the real estate firm is the gross commission earned by the particular real estate firm including that portion of the commission paid to brokers, including designated and managing brokers, in the same firm on a particular transaction. However, when a real estate commission on a particular transaction is divided among real estate firms at the closing of the transaction, including a firm located out of state, each firm must pay the tax only upon its respective shares of said commission. Moreover, when the real estate firm has paid the tax as provided herein, brokers, including designated and managing brokers, within the same real estate firm may not be required to pay a similar tax upon the same transaction. If any firm located out of state receives a share of commission on a particular transaction, that company or broker must pay the tax based on the requirements of this section and RCW 82.04.067.

(3) For the purposes of this section, "broker," "designated broker," "managing broker," and "real estate firm" have the same meaning as provided in RCW 18.85.011. [2011 c 322 § 2; 1997 c 7 § 1; 1996 c 1 § 1; 1993 sp.s. c 25 § 202; 1985 c 32 § 2; 1983 2nd ex.s. c 3 § 1; 1983 c 9 § 1; 1970 ex.s. c 65 § 3.]

Intent—2011 c 322: "The legislature intends to clarify existing law that the basis for determining the business and occupation tax for real estate firms

is the commission amount received by each real estate firm involved in a real estate transaction. In clarifying existing law, the legislature intends to preserve the historic method of calculating business and occupation tax for real estate firms." [2011 c 322 § 1.]

Reviser's note: (1) "Sections 42 through 50 and 52" consist of the 1983 2nd ex.s. c 3 amendments to RCW 82.49.010, 88.02.020, 88.02.030, 88.02.050, and 88.02.110 and the enactment of RCW 43.51.400, 82.49.020, 82.49.070, 88.02.070, and 88.02.080. "Section 53" consists of the enactment of a new section which appears as a footnote to RCW 88.02.020, and "sections 65 and 66" consist of the enactment of new sections which appear as footnotes to RCW 82.04.255 above.

(2) "Sections 1 through 4" consist of the 1983 2nd ex.s. c 3 §§ 1-4 amendments to RCW 82.04.255, 82.04.290, 82.04.2904, and 82.04.2901, respectively.

(3) "Sections 21, 22, and 51" consist of the 1983 2nd ex.s. c 3 amendments to RCW 82.48.010, 82.48.030, and 84.36.080, respectively.

(4) "Section 63" consists of the 1983 2nd ex.s. c 3 amendment to RCW 82.32.045.

(5) "Sections 61 and 62" consist of the 1983 2nd ex.s. c 3 §§ 61 and 62 amendments to RCW 82.04.2901 and 82.08.020, respectively. For the effective date of sections 61 and 62, see *Bond v. Burrows*, 103 Wn.2d 153 (1984).

Additional notes found at www.leg.wa.gov

82.04.264 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.04.290 Tax on international investment management services or other business or service activities. (1) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2)(a) Upon every person engaging within this state in any business activity other than or in addition to an activity taxed explicitly under another section in this chapter or subsection (1) or (3) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.5 percent.

(b) This subsection (2) includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section.

(3)(a) Until July 1, 2024, upon every person engaging within this state in the business of performing aerospace product development for others, as to such persons, the amount of tax with respect to such business shall be equal to the gross income of the business multiplied by a rate of 0.9 percent.

(b) "Aerospace product development" has the meaning as provided in RCW 82.04.4461. [2011 c 174 § 101; 2008 c 81 § 6; 2005 c 369 § 8; 2004 c 174 § 2; 2003 c 343 § 2; 2001 1st sp.s. c 9 § 6; (2001 1st sp.s. c 9 § 4 expired July 1, 2001). Prior: 1998 c 343 § 4; 1998 c 331 § 2; 1998 c 312 § 8; 1998 c 308 § 5; 1998 c 308 § 4; 1997 c 7 § 2; 1996 c 1 § 2; 1995 c

229 § 3; 1993 sp.s. c 25 § 203; 1985 c 32 § 3; 1983 2nd ex.s. c 3 § 2; 1983 c 9 § 2; 1983 c 3 § 212; 1971 ex.s. c 281 § 8; 1970 ex.s. c 65 § 4; 1969 ex.s. c 262 § 39; 1967 ex.s. c 149 § 14; 1963 ex.s. c 28 § 2; 1961 c 15 § 82.04.290; prior: 1959 ex.s. c 5 § 5; 1955 c 389 § 49; prior: 1953 c 195 § 2; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Findings—Intent—Severability—Effective date—2005 c 369: See notes following RCW 43.20A.890.

Effective date—2004 c 174: See note following RCW 82.04.2908.

Expiration dates—2001 1st sp.s. c 9: "(1) Sections 2 and 4 of this act expire July 1, 2001.

(2) Section 5 of this act expires July 1, 2003.

(3) Section 8 of this act expires July 22, 2001." [2001 1st sp.s. c 9 § 10.]

Effective dates—2001 1st sp.s. c 9: See note following RCW 82.04.298.

Additional notes found at www.leg.wa.gov

82.04.2909 Tax on aluminum smelters. (Expires January 1, 2017.) (1) Upon every person who is an aluminum smelter engaging within this state in the business of manufacturing aluminum; as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of .2904 percent.

(2) Upon every person who is an aluminum smelter engaging within this state in the business of making sales at wholesale of aluminum manufactured by that person, as to such persons the amount of tax with respect to such business is equal to the gross proceeds of sales of the aluminum multiplied by the rate of .2904 percent.

(3) A person reporting under the tax rate provided in this section must file a complete annual report with the department under RCW 82.32.534.

(4) This section expires January 1, 2017. [2011 c 174 § 301. Prior: 2010 1st sp.s. c 2 § 1; 2010 c 114 § 108; 2006 c 182 § 1; 2004 c 24 § 3.]

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Intent—2004 c 24: "The legislature recognizes that the loss of domestic manufacturing jobs has become a national concern. Washington state has lost one out of every six manufacturing jobs since July 2000. The aluminum industry has long been an important component of Washington state's manufacturing base, providing family-wage jobs often in rural communities where unemployment rates are very high. The aluminum industry is electricity intensive and was greatly affected by the dramatic increase in electricity prices which began in 2000 and which continues to affect the Washington economy. Before the energy crisis, aluminum smelters provided about 5,000 direct jobs. Today they provide fewer than 1,000 direct jobs. For every job lost in that industry, almost three additional jobs are estimated to be lost elsewhere in the state's economy. It is the legislature's intent to preserve and restore family-wage jobs by providing tax relief to the state's aluminum industry.

The electric loads of aluminum smelters provide a unique benefit to the infrastructure of the electric power system. Under the transmission tariff of the Bonneville Power Administration, aluminum smelter loads, whether served with federal or nonfederal power, are subject to short-term interruptions that allow a higher import capability on the transmission interconnection between the northwest and California. These stability reserves allow more power to be imported in winter months, reducing the need for additional generation in the northwest, and would be used to prevent a wide-

spread transmission collapse and blackout if there were a failure in the transmission interconnection between California and the northwest. It is the legislature's intent to retain these benefits for the people of the state." [2004 c 24 § 1.]

Effective date—2004 c 24: "This act takes effect July 1, 2004." [2004 c 24 § 15.]

82.04.294 Tax on manufacturers or wholesalers of solar energy systems. (Expires June 30, 2014.) (1) Upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules or stirling converters, or of manufacturing solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems; as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2) Upon every person engaging within this state in the business of making sales at wholesale of solar energy systems using photovoltaic modules or stirling converters, or of solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems, manufactured by that person; as to such persons the amount of tax with respect to such business is equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules or stirling converters, or of the solar grade silicon to be used exclusively in components of such systems, multiplied by the rate of 0.275 percent.

(3) Silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers are "semiconductor materials" for the purposes of RCW 82.08.9651 and 82.12.9651.

(4) The definitions in this subsection apply throughout this section.

(a) "Compound semiconductor solar wafers" means a semiconductor solar wafer composed of elements from two or more different groups of the periodic table.

(b) "Module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(c) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(d) "Silicon solar cells" means a photovoltaic cell manufactured from a silicon solar wafer.

(e) "Silicon solar wafers" means a silicon wafer manufactured for solar conversion purposes.

(f) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(g) "Solar grade silicon" means high-purity silicon used exclusively in components of solar energy systems using photovoltaic modules to capture direct sunlight. "Solar grade silicon" does not include silicon used in semiconductors.

(h) "Stirling converter" means a device that produces electricity by converting heat from a solar source utilizing a stirling engine.

(i) "Thin film solar devices" means a nonparticipating substrate on which various semiconducting materials are deposited to produce a photovoltaic cell that is used to generate electricity.

(5) A person reporting under the tax rate provided in this section must file a complete annual report with the department under RCW 82.32.534.

(6) This section expires June 30, 2014. [2011 c 179 § 1; 2010 c 114 § 109; 2009 c 469 § 501; 2007 c 54 § 8; 2005 c 301 § 2.]

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2009 c 469: See note following RCW 82.08.962.

Severability—2007 c 54: See note following RCW 82.04.050.

Findings—Intent—2005 c 301: "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of key growth industries in the state. The legislature further finds that targeting tax incentives to focus on key growth industries is an important strategy to enhance the state's business climate.

A recent report by the Washington State University energy program recognized the solar electric industry as one of the state's important growth industries. It is of great concern that businesses in this industry have been increasingly expanding and relocating their operations elsewhere. The report indicates that additional incentives for the solar electric industry are needed in recognition of the unique forces and issues involved in business decisions in this industry.

Therefore, the legislature intends to enact comprehensive tax incentives for the solar electric industry that address activities of the manufacture of these products and to encourage these industries to locate in Washington. Tax incentives for the solar electric industry are important in both retention and expansion of existing business and attraction of new businesses, all of which will strengthen this growth industry within our state, will create jobs, and will bring many indirect benefits to the state." [2005 c 301 § 1.]

Effective date—2005 c 301: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 301 § 6.]

82.04.333 Exemptions—Small harvesters. In computing tax under this chapter, a person who is a small harvester as defined in RCW 84.33.035 may deduct an amount not to exceed one hundred thousand dollars per tax year from the gross receipts or value of products proceeding or accruing from timber harvested by that person. A deduction under this section may not reduce the amount of tax due to less than zero. [2011 c 101 § 4; 2007 c 48 § 5; 1990 c 141 § 1.]

Effective date—2007 c 48: See note following RCW 82.04.260.

82.04.394 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.04.4274 Deductions—Nonprofit management companies—Personnel performing on-site functions. (1) In computing tax due under this chapter, there may be deducted from the measure of tax all amounts received by:

(a) A nonprofit property management company from the owner of property for gross wages, benefits, and payroll taxes paid to, or for, personnel performing on-site functions;

(b) A property management company from a housing authority for gross wages, benefits, and payroll taxes paid to, or for, personnel performing on-site functions; or

(c) A property management company from a limited liability company or limited partnership of which the sole managing member or sole general partner is a housing authority

for gross wages, benefits, and payroll taxes paid to, or for, personnel performing on-site functions.

(2) The definitions in this subsection apply to this section.

(a) "Personnel performing on-site functions" means a person who meets all of the following conditions:

(i) The person works at the owner's property or centrally performs on-site functions for the property;

(ii) The person's duties include leasing property units, maintaining the property, preparing tenant income certification paperwork or other compliance documents required to lease the unit, collecting rents, recording rents, or performing similar activities; and

(iii) The property management company, for whom the personnel performing on-site functions works, operates under a written property management agreement.

(b) "Nonprofit property management company" means a property management company that:

(i) Is exempt from the tax under 26 U.S.C. Sec. 501(c) of the federal internal revenue code, as it exists on January 1, 2010, but only when such organization is providing property management services for low-income housing that has qualified for the property tax exemption under RCW 84.36.560; or

(ii) Is a public corporation established under RCW 35.21.730.

(c) "Housing authority" means a housing authority created pursuant to chapter 35.82 RCW. [2011 1st sp.s. c 26 § 1.]

Affect on existing rights, liabilities, obligations, and proceedings—2011 1st sp.s. c 26: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2011 1st sp.s. c 26 § 3.]

82.04.4275 Deductions—Child welfare services. (1) A health or social welfare organization may deduct from the measure of tax amounts received as compensation for providing child welfare services under a government-funded program.

(2) A person may deduct from the measure of tax amounts received from the state of Washington for distribution to a health or social welfare organization that is eligible to deduct the distribution under subsection (1) of this section.

(3) The following definitions apply to this section:

(a) "Child welfare services" has the same meaning as provided in RCW 74.13.020; and

(b) "Health or social welfare organization" has the meaning provided in RCW 82.04.431. [2011 c 163 § 1.]

Application—2011 c 163: "This act applies to amounts received by a taxpayer on or after August 1, 2011." [2011 c 163 § 2.]

82.04.4277 Deductions—Health and social welfare organizations—Mental health services. (Expires August 1, 2016.) (1) A health or social welfare organization may deduct from the measure of tax amounts received as compensation for providing mental health services under a government-funded program.

(2) A regional support network may deduct from the measure of tax amounts received from the state of Washington for distribution to a health or social welfare organization

that is eligible to deduct the distribution under subsection (1) of this section.

(3) A person claiming a deduction under this section must file a complete annual report with the department under RCW 82.32.534.

(4) The definitions in this subsection apply to this section.

(a) "Health or social welfare organization" has the meaning provided in RCW 82.04.431.

(b) "Mental health services" and "regional support network" have the meanings provided in RCW 71.24.025.

(5) This section expires August 1, 2016. [2011 1st sp.s. c 19 § 1.]

Application—2011 1st sp.s. c 19: "This act applies to amounts received by a taxpayer on or after August 1, 2011." [2011 1st sp.s. c 19 § 4.]

82.04.4297 Deductions—Compensation from public entities for health or social welfare services—Exception.

In computing tax there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization, as defined in RCW 82.04.431, or by a municipal corporation or political subdivision, except deductions are not allowed under this section for amounts that are received under an employee benefit plan. [2011 1st sp.s. c 19 § 2; 2002 c 314 § 3; 2001 2nd sp.s. c 23 § 2; 1988 c 67 § 1; 1980 c 37 § 17. Formerly RCW 82.04.430(16).]

Application—2011 1st sp.s. c 19: See note following RCW 82.04.4277.

Findings—Refund of taxes—Effective date—2002 c 314: See notes following RCW 82.04.4311.

Findings—2001 2nd sp.s. c 23: "The legislature finds that the deduction under the business and occupation tax statutes for compensation from public entities for health or social welfare services was intended to provide government with greater purchasing power when government provides financial support for the provision of health or social welfare services to benefited classes of persons. The legislature also finds that both the legislature and the United States congress have in recent years modified government-funded health care programs to encourage participation by beneficiaries in highly regulated managed care programs operated by persons who act as intermediaries between government entities and health or social welfare organizations. The legislature further finds that the objective of these changes is again to extend the purchasing power of scarce government health care resources, but that this objective would be thwarted to a significant degree if the business and occupation tax deduction were lost by health or social welfare organizations solely on account of their participation in managed care for government-funded health programs. In keeping with the original purpose of the health or social welfare deduction, it is desirable to ensure that compensation received from government sources through contractual managed care programs also be deductible." [2001 2nd sp.s. c 23 § 1.]

Effective date—2001 2nd sp.s. c 23: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 13, 2001]." [2001 2nd sp.s. c 23 § 4.]

Intent—1980 c 37: See note following RCW 82.04.4281.

"Health or social welfare organization" defined—Conditions for exemption—"Health or social welfare services" defined: RCW 82.04.431.

82.04.431 "Health or social welfare organization" defined—Conditions for exemption—"Health or social welfare services" defined. (1) The term "health or social welfare organization" means an organization, including any

community action council, which renders health or social welfare services as defined in subsection (2) of this section, which is a domestic or foreign not-for-profit corporation under chapter 24.03 RCW and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or which is a corporation sole under chapter 24.12 RCW. Health or social welfare organization does not include a corporation providing professional services as authorized in chapter 18.100 RCW. In addition a corporation in order to be exempt under RCW 82.04.4297 must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the public service of the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(d) The corporation must be duly licensed or certified where licensing or certification is required by law or regulation;

(e) The amounts received qualifying for exemption must be used for the activities for which the exemption is granted;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The director of revenue must have access to its books in order to determine whether the corporation is exempt from taxes within the intent of RCW 82.04.4297 and this section.

(2) The term "health or social welfare services" includes and is limited to:

(a) Mental health, drug, or alcoholism counseling or treatment;

(b) Family counseling;

(c) Health care services;

(d) Therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, or physically, developmentally, or emotionally-disabled individuals;

(e) Activities which are for the purpose of preventing or ameliorating juvenile delinquency or child abuse, including recreational activities for those purposes;

(f) Care of orphans or foster children;

(g) Day care of children;

(h) Employment development, training, and placement;

(i) Legal services to the indigent;

(j) Weatherization assistance or minor home repair for low-income homeowners or renters;

(k) Assistance to low-income homeowners and renters to offset the cost of home heating energy, through direct benefits to eligible households or to fuel vendors on behalf of eligible households;

(l) Community services to low-income individuals, families, and groups, which are designed to have a measurable

and potentially major impact on causes of poverty in communities of the state; and

(m) Temporary medical housing, as defined in RCW 82.08.997, if the housing is provided only:

(i) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(ii) By a person that does not furnish lodging or related services to the general public. [2011 1st sp.s. c 19 § 3; 2008 c 137 § 1; 1986 c 261 § 6; 1985 c 431 § 3; 1983 1st ex.s. c 66 § 1; 1980 c 37 § 80; 1979 ex.s. c 196 § 6.]

Application—2011 1st sp.s. c 19: See note following RCW 82.04.4277.

Effective date—2008 c 137: See note following RCW 82.08.997.

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.04.4481 Credit—Property taxes paid by aluminum smelter. (1) In computing the tax imposed under this chapter, a credit is allowed for all property taxes paid during the calendar year on property owned by a direct service industrial customer and reasonably necessary for the purposes of an aluminum smelter.

(2) A person claiming the credit under this section is subject to all the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year. Credits carried over must be applied to tax liability before new credits. No refunds may be granted for credits under this section.

(3) Credits may not be claimed under this section for property taxes levied for collection in 2017 and thereafter.

(4) A person claiming the credit provided in this section must file a complete annual report with the department under RCW 82.32.534. [2011 c 174 § 302. Prior: 2010 1st sp.s. c 2 § 2; 2010 c 114 § 118; 2006 c 182 § 2; 2004 c 24 § 8.]

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

82.04.4495 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.04.460 Apportionable income—Taxable in Washington and another state. (1) Except as otherwise provided in this section, any person earning apportionable income taxable under this chapter and also taxable in another state must, for the purpose of computing tax liability under this chapter, apportion to this state, in accordance with RCW 82.04.462, that portion of the person's apportionable income derived from business activities performed within this state.

(2) The department must by rule provide a method of apportioning the apportionable income of financial institutions, where such apportionable income is taxable under RCW 82.04.290. The rule adopted by the department must, to the extent feasible, be consistent with the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions as exist-

ing on June 1, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, except that:

(a) The department's rule must provide for a single factor apportionment method based on the receipts factor; and

(b) The definition of "financial institution" contained in appendix A to the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions is advisory only.

(3) The department may by rule provide a method or methods of apportioning or allocating gross income derived from sales of telecommunications service and competitive telephone service taxed under this chapter, if the gross proceeds of sales subject to tax under this chapter do not fairly represent the extent of the taxpayer's income attributable to this state. The rule must provide for an equitable and constitutionally permissible division of the tax base.

(4) For purposes of this section, the following definitions apply unless the context clearly requires otherwise:

(a) "Apportionable income" means gross income of the business generated from engaging in apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under this chapter if received from activities in this state, less the exemptions and deductions allowable under this chapter. For purposes of this subsection, "apportionable activities" means only those activities taxed under:

- (i) RCW 82.04.255;
- (ii) *RCW 82.04.260 (3), (4), (5), (6), (7), (8), (9), and (12);
- (iii) RCW 82.04.280 (1)(e);
- (iv) RCW 82.04.285;
- (v) RCW 82.04.286;
- (vi) RCW 82.04.290;
- (vii) RCW 82.04.2907;
- (viii) RCW 82.04.2908;
- (ix) RCW 82.04.263, but only to the extent of any activity that would be taxable under any of the provisions enumerated under (a)(i) through (viii) of this subsection (4) if the tax classification in RCW 82.04.263 did not exist; and
- (x) RCW *82.04.260(13) and 82.04.280(1)(a), but only with respect to advertising.

(b)(i) "Taxable in another state" means that the taxpayer is subject to a business activities tax by another state on its income received from engaging in apportionable activities; or the taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activities, but any other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards in RCW 82.04.067(1).

(ii) For purposes of this subsection (4)(b), "business activities tax" and "state" have the same meaning as in RCW 82.04.462. [2011 c 174 § 203; 2010 1st sp.s. c 23 § 108; 2004 c 174 § 6; 1985 c 7 § 154; 1983 2nd ex.s. c 3 § 28; 1975 1st ex.s. c 291 § 9; 1961 c 15 § 82.04.460. Prior: 1941 c 178 § 5; 1939 c 225 § 4; Rem. Supp. 1941 § 8370-8a.]

*Reviser's note: RCW 82.04.260 was amended by 2011 c 2 § 203 (Initiative Measure No. 1107), changing subsections (4), (5), (6), (7), (8), (9), (12), and (13) to subsections (5), (6), (7), (8), (9), (10), (13), and (14).

Contingency—Application—2010 1st sp.s. c 23 §§ 102-112: See notes following RCW 82.04.067.

[2011 RCW Supp—page 1596]

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Effective date—2004 c 174: See note following RCW 82.04.2908.

Additional notes found at www.leg.wa.gov

82.04.645 Exemptions—Financial institutions—Amounts received from certain affiliated persons. (1) This chapter does not apply to amounts received by a financial institution from an affiliated person if the amounts are received from transactions that are required to be at arm's length under sections 23A or 23B of the federal reserve act as existing on June 1, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section. For purposes of this subsection, "financial institution" has the same meaning as in RCW 82.04.080.

(2) As used in this section, "affiliated" means under common control. "Control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. [2011 c 174 § 102; 2010 1st sp.s. c 23 § 110.]

Contingency—Application—2010 1st sp.s. c 23 §§ 102-112: See notes following RCW 82.04.067.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

82.04.655 Exemptions—Joint municipal utility services authorities. This chapter does not apply to any payments between, or any transfer of assets to or from, a joint municipal utility services authority created under chapter 39.106 RCW and any of its members. [2011 c 258 § 11.]

Short title—Purpose—Intent—2011 c 258: See RCW 39.106.010.

82.04.750 Exemptions—Restaurant employee meals. (1) This chapter does not apply to restaurants in respect to meals provided without specific charge to employees.

(2) For the purposes of this section, the definitions in RCW 82.08.9995 apply. [2011 c 55 § 1.]

Effective date—2011 c 55: See note following RCW 82.08.9995.

Chapter 82.08 RCW RETAIL SALES TAX

Sections

82.08.020	Tax imposed—Retail sales—Retail car rental.
82.08.02525	Exemptions—Sale of copied public records by state and local agencies. (<i>Effective January 1, 2012.</i>)
82.08.0255	Exemptions—Sales of motor vehicle and special fuel—Conditions—Credit or refund of special fuel used outside this state in interstate commerce.
82.08.02565	Exemptions—Sales of machinery and equipment for manufacturing, research and development, or a testing operation—Labor and services for installation—Exemption certificate—Rules.
82.08.025651	Exemptions—Sales of machinery and equipment to public research institutions.
82.08.0273	Exemptions—Sales to nonresidents of tangible personal property, digital goods, and digital codes for use outside the state—Proof of nonresident status—Penalties.

82.08.0297	Exemptions—Sales of food purchased under the supplemental nutrition assistance program.
82.08.160	Remittance of tax—Liquor excise tax fund created.
82.08.805	Exemptions—Personal property used at an aluminum smelter.
82.08.806	Exemptions—Sale of computer equipment parts and services to printer or publisher.
82.08.820	Exemptions—Remittance—Warehouse and grain elevators and distribution centers—Material-handling and racking equipment—Construction of warehouse or elevator—Information sheet—Rules—Records—Exceptions. (<i>Effective until July 1, 2012.</i>)
82.08.820	Exemptions—Remittance—Warehouse and grain elevators and distribution centers—Material-handling and racking equipment—Construction of warehouse or elevator—Information sheet—Rules—Records—Exceptions. (<i>Effective July 1, 2012.</i>)
82.08.991	Repealed.
82.08.992	Repealed.
82.08.999	Exemptions—Joint municipal utility services authorities.
82.08.9995	Exemptions—Restaurant employee meals.

82.08.020 Tax imposed—Retail sales—Retail car rental. (1) There is levied and collected a tax equal to six and five-tenths percent of the selling price on each retail sale in this state of:

(a) Tangible personal property, unless the sale is specifically excluded from the RCW 82.04.050 definition of retail sale;

(b) Digital goods, digital codes, and digital automated services, if the sale is included within the RCW 82.04.050 definition of retail sale;

(c) Services, other than digital automated services, included within the RCW 82.04.050 definition of retail sale;

(d) Extended warranties to consumers; and

(e) Anything else, the sale of which is included within the RCW 82.04.050 definition of retail sale.

(2) There is levied and collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(3) Beginning July 1, 2003, there is levied and collected an additional tax of three-tenths of one percent of the selling price on each retail sale of a motor vehicle in this state, other than retail car rentals taxed under subsection (2) of this section. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(4) For purposes of subsection (3) of this section, "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road vehicles as defined in RCW 46.04.365, nonhighway vehicles as defined in RCW 46.09.310, and snowmobiles as defined in RCW 46.04.546.

(5) Beginning on December 8, 2005, 0.16 percent of the taxes collected under subsection (1) of this section must be dedicated to funding comprehensive performance audits required under RCW 43.09.470. The revenue identified in this subsection must be deposited in the performance audits of government account created in RCW 43.09.475.

(6) The taxes imposed under this chapter apply to successive retail sales of the same property.

(7) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW

82.12.020. [2011 c 171 § 120; 2010 c 106 § 212; (2010 c 106 § 211 expired January 1, 2011); (2009 c 469 § 802 expired January 1, 2011); 2006 c 1 § 3 (Initiative Measure No. 900, approved November 8, 2005); 2003 c 361 § 301; 2000 2nd sp.s. c 4 § 1; 1998 c 321 § 36 (Referendum Bill No. 49, approved November 3, 1998); 1992 c 194 § 9; 1985 c 32 § 1. Prior: 1983 2nd ex.s. c 3 § 62; 1983 2nd ex.s. c 3 § 41; 1983 c 7 § 6; 1982 1st ex.s. c 35 § 1; 1981 2nd ex.s. c 8 § 1; 1977 ex.s. c 324 § 2; 1975-'76 2nd ex.s. c 130 § 1; 1971 ex.s. c 281 § 9; 1969 ex.s. c 262 § 31; 1967 ex.s. c 149 § 19; 1965 ex.s. c 173 § 13; 1961 c 293 § 6; 1961 c 15 § 82.08.020; prior: 1959 ex.s. c 3 § 5; 1955 ex.s. c 10 § 2; 1949 c 228 § 4; 1943 c 156 § 5; 1941 c 76 § 2; 1939 c 225 § 10; 1935 c 180 § 16; Rem. Supp. 1949 § 8370-16.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—2010 c 106 § 212: "Section 212 of this act takes effect January 1, 2011." [2010 c 106 § 409.]

Expiration date—2010 c 106 § 211: "Section 211 of this act expires January 1, 2011." [2010 c 106 § 408.]

Expiration date—2009 c 469 § 802: "Section 802 of this act expires January 1, 2011." [2009 c 469 § 904.]

Effective date—2009 c 469 §§ 801 and 802: "Sections 801 and 802 of this act take effect August 1, 2009." [2009 c 469 § 903.]

Short title—Effective date—2006 c 1 (Initiative Measure No. 900): See RCW 43.09.471.

Policies and purposes—Construction—Severability—Part headings not law—2006 c 1 (Initiative Measure No. 900): See notes following RCW 43.09.470.

Effective dates—2003 c 361: "Sections 301 through 602 of this act take effect July 1, 2003, and sections 201 and 202 of this act take effect August 1, 2003." [2003 c 361 § 703.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Legislative intent—1992 c 194: "The legislature intends to exempt rental cars from state and local motor vehicle excise taxes, and to impose additional sales and use taxes in lieu thereof. These additional sales and use taxes are intended to provide as much revenue to the funds currently receiving motor vehicle excise tax revenue, including the transportation funds and the general fund, as each fund would have received if the motor vehicle excise tax exemptions had not been enacted. Revenues from these additional sales and use taxes are intended to be distributed in the same manner as the motor vehicle excise tax revenues they replace." [1992 c 194 § 4.]

***Reviser's note:** "Substitute Senate Bill No. 2778" failed to become law.

High capacity transportation systems—Sales and use tax: RCW 81.104.170. Manufacturers, study: 1994 c 66.

Additional notes found at www.leg.wa.gov

82.08.02525 Exemptions—Sale of copied public records by state and local agencies. (*Effective January 1, 2012.*) The tax levied by RCW 82.08.020 does not apply to the sale of public records by state and local agencies, as the terms are defined in RCW 42.56.010, that are copied or transferred electronically under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer

information, and academic transcripts. [2011 c 60 § 49; 2009 c 535 § 505; 1996 c 63 § 1.]

Effective date—2011 c 60: See RCW 42.17A.919.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Additional notes found at www.leg.wa.gov

82.08.0255 Exemptions—Sales of motor vehicle and special fuel—Conditions—Credit or refund of special fuel used outside this state in interstate commerce. (1) The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicle and special fuel if:

(a) The fuel is purchased for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(1)(h); or

(c) The fuel is purchased by a public transportation benefit area created under chapter 36.57A RCW or a county-owned ferry or county ferry district created under chapter 36.54 RCW for use in passenger-only ferry vessels; or

(d) The fuel is purchased by the Washington state ferry system for use in a state-owned ferry after June 30, 2013; or

(e) The fuel is purchased by a county-owned ferry for use in ferry vessels after June 30, 2013; or

(f) The fuel is taxable under chapter 82.36 or 82.38 RCW.

(2) Any person who has paid the tax imposed by RCW 82.08.020 on the sale of special fuel delivered in this state shall be entitled to a credit or refund of such tax with respect to fuel subsequently established to have been actually transported and used outside this state by persons engaged in interstate commerce. The tax shall be claimed as a credit or refunded through the tax reports required under RCW 82.38.150. [2011 1st sp.s. c 16 § 4; 2007 c 223 § 9; 2005 c 443 § 5; 1998 c 176 § 4. Prior: 1983 1st ex.s. c 35 § 2; 1983 c 108 § 1; 1980 c 147 § 1; 1980 c 37 § 23. Formerly RCW 82.08.030(5).]

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

Effective date—2007 c 223: See note following RCW 36.57A.220.

Finding—Intent—2005 c 443: "The legislature finds that a number of tax exemptions, deductions, credits, and other preferences have outlived their usefulness. State records show no taxpayers have claimed relief under these tax preferences in recent years. The intent of this act is to update and simplify the tax statutes by repealing these outdated tax preferences." [2005 c 443 § 1.]

Effective date—2005 c 443: "This act takes effect July 1, 2006." [2005 c 443 § 8.]

Rules—Findings—Effective date—1998 c 176: See RCW 82.36.800, 82.36.900, and 82.36.901.

Intent—1983 1st ex.s. c 35: "It is the intent of the legislature that special fuel purchased in Washington upon which the special fuel tax has been paid, regardless of whether or not the tax is subsequently refunded or credited in whole or in part, should not be subject to the sales and use tax if the special fuel is transported and used outside the state by persons engaged in interstate commerce." [1983 1st ex.s. c 35 § 1.]

Intent—1980 c 37: See note following RCW 82.04.4281.

Diesel, biodiesel, and aircraft fuel sales tax exemption for farmers: RCW 82.08.865.

[2011 RCW Supp—page 1598]

82.08.02565 Exemptions—Sales of machinery and equipment for manufacturing, research and development, or a testing operation—Labor and services for installation—Exemption certificate—Rules. (1)(a) The tax levied by RCW 82.08.020 does not apply to sales to a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, to sales to a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.

(b) Sellers making tax-exempt sales under this section must obtain from the purchaser an exemption certificate in a form and manner prescribed by the department by rule. The seller must retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02565:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation, testing operation, or research and development operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation, testing operation, or research and development operation. "Machinery and equipment" also includes digital goods.

(b) "Machinery and equipment" does not include:

(i) Hand-powered tools;

(ii) Property with a useful life of less than one year;

(iii) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building; and

(iv) Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation if the machinery and equipment:

(i) Acts upon or interacts with an item of tangible personal property;

(ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or testing site;

(iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site;

(iv) Provides physical support for or access to tangible personal property;

(v) Produces power for, or lubricates machinery and equipment;

(vi) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation;

(vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported; or

(viii) Is integral to research and development as defined in RCW 82.63.010.

(d) "Manufacturer" means a person that qualifies as a manufacturer under RCW 82.04.110. "Manufacturer" also includes a person that prints newspapers or other materials.

(e) "Manufacturing" means only those activities that come within the definition of "to manufacture" in RCW 82.04.120 and are taxed as manufacturing or processing for hire under chapter 82.04 RCW, or would be taxed as such if such activity were conducted in this state or if not for an exemption or deduction. "Manufacturing" also includes printing newspapers or other materials. An activity is not taxed as manufacturing or processing for hire under chapter 82.04 RCW if the activity is within the purview of chapter 82.16 RCW.

(f) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site. With respect to the production of class A or exceptional quality biosolids by a wastewater treatment facility, the manufacturing operation begins at the point where class B biosolids undergo additional processing to achieve class A or exceptional quality standards. Notwithstanding anything to the contrary in this section, the term also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the preparation of food products on the premises of a person selling food products at retail.

(g) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel.

(h) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire.

(i) "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

(j) "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point where the tangible personal property leaves the testing site. The term also includes the testing of tangible personal property for use in that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the testing of tangible personal property for use in the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail. [2011 c 23 § 2; 2009 c 535 § 510; 1999 c 211 § 5; 1999 c 211 § 3; 1998 c 330 § 1. Prior: 1996 c 247 § 2; 1996 c 173 § 3; 1995 1st sp.s. c 3 § 2.]

Findings—2011 c 23: "(1) In 1995, the legislature enacted a sales and use tax exemption for manufacturing machinery and equipment, commonly referred to as the "M&E exemption." The legislature finds that the purposes

of this exemption were to encourage the growth and development of the state's private sector manufacturing industry and improve this state's ability to compete with other states for manufacturing investment. The legislature further finds that it was not the purpose of the M&E exemption to provide tax breaks to state agencies and institutions, nor to public utilities and other businesses with respect to machinery and equipment primarily used for activities that are taxable under the state public utility tax or are otherwise not considered to be manufacturing for business and occupation tax purposes.

(2) The legislature further finds that despite previous attempts at clarifying the M&E exemption, significant ambiguity persists, particularly with respect to the scope of the exemption. Such ambiguity results in costly appeals and litigation and may result in significant unanticipated revenue losses for the state and local governments.

(3) Therefore, the legislature finds it necessary to reaffirm its original intent in establishing the M&E exemption. The legislature declares that the amendments to the existing M&E exemption and to RCW 82.04.120 in this act are clarifying and, as such, apply retroactively as well as prospectively.

(4) The legislature finds that Washington is home to premier public research institutions. The legislature recognizes that the state's public universities provide cutting-edge research and development, which helps stimulate growth in the private sector and is vital to the economic well-being of our state. University research leads directly to new products, companies, production methods, and ways of organizing work. The legislature further recognizes that our public universities will play an important role in shaping the next generation of Washington industries, including biofuels and other renewable energy, global health, and advanced manufacturing. Therefore, because the amendments to the existing M&E exemption in this act clarify that state agencies and institutions are not eligible for the M&E exemption, this act provides a new, stand-alone sales and use tax exemption for machinery and equipment used primarily in technological research and development operations by the state's four-year institutions of higher education." [2011 c 23 § 1.]

Intent—2011 c 23: "The legislature declares that the only reason why the phrase "the production of electricity by a light and power business as defined in RCW 82.16.010" was deleted from the definition of "manufacturing operation" in RCW 82.08.02565(2)(f) in section 2 of this act is because that language is superfluous." [2011 c 23 § 7.]

Application—2011 c 23: "Sections 2 and 3 of this act apply both prospectively and retroactively to any tax period open for assessment or refund of taxes." [2011 c 23 § 9.]

Effective date—Construction—2011 c 23: See notes following RCW 82.08.025651.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Intent—1999 c 211: "The legislature finds that the application of the manufacturer's machinery and equipment sales and use tax exemption has, in some instances, been difficult and confusing for taxpayers, and included difficult reporting and recordkeeping requirements. In this act, it is the intent of the legislature to make clear its intent for the application of the exemption, and to extend the exemption to the purchase and use of machinery and equipment for businesses that perform testing of manufactured goods for manufacturers or processors for hire." [1999 c 211 § 1.]

Intent—1999 c 211 § 2 and 3: See note following RCW 82.04.120.

Findings—Intent—1996 c 247: See note following RCW 82.08.02566.

Findings—Intent—1996 c 173: "The legislature finds that the health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in the state's manufacturing industries.

The legislature also finds that sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature have improved Washington's ability to compete with other states for manufacturing investment, but that additional incentives for manufacturers need to be adopted to solidify and enhance the state's competitive position.

The legislature intends to accomplish this by extending the current manufacturing machinery and equipment exemptions to allow a sales tax exemption for labor and service charges for repairing, cleaning, altering, or improving machinery and equipment, and a sales and use tax exemption for repair and replacement parts with a useful life of one year or more." [1996 c 173 § 1.]

Findings—1995 1st sp.s. c 3: "The legislature finds and declares that:

(1) The health, safety, and welfare of the people of the state of Wash-

ington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in our state's private sector;

(2) The state's private sector must be encouraged to commit to continuous improvement of process, products, and services and to deliver high-quality, high-value products through technological innovations and high-performance work organizations;

(3) The state's opportunities for increased economic dealings with other states and nations of the world are dependent on supporting and attracting a diverse, stable, and competitive economic base of private sector employers;

(4) The state's current policy of applying its sales and use taxes to machinery, equipment, and installation labor used in manufacturing, research and development, and other activities has placed our state's private sector at a competitive disadvantage with other states and serves as a significant disincentive to the continuous improvement of products, technology, and modernization necessary for the preservation, stabilization, and expansion of employment and to ensure a stable economy; and

(5) It is vital to the continued development of economic opportunity in this state, including the development of new businesses and the expansion or modernization of existing businesses, that the state of Washington provide tax incentives to entities making a commitment to sites and operations in this state." [1995 1st sp.s. c 3 § 1.]

Additional notes found at www.leg.wa.gov

82.08.025651 Exemptions—Sales of machinery and equipment to public research institutions. (1)(a) The tax levied by RCW 82.08.020 does not apply to sales to a public research institution of machinery and equipment used primarily in a research and development operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.

(b) Sellers making tax-exempt sales under this section must obtain from the purchaser an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(2) A public research institution claiming the exemption provided in this section must file a complete annual survey with the department under RCW 82.32.585.

(3) For purposes of this section, the following definitions apply:

(a) "Machinery and equipment" means those fixtures, pieces of equipment, digital goods, and support facilities that are an integral and necessary part of a research and development operation, and tangible personal property that becomes an ingredient or component of such fixtures, equipment, and support facilities, including repair parts and replacement parts. "Machinery and equipment" may include, but is not limited to: Computers; software; data processing equipment; laboratory equipment, instrumentation, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, or invention; vats, tanks, and fermenters; operating structures; and all equipment used to control, monitor, or operate the machinery and equipment.

(b) "Machinery and equipment" does not include:

- (i) Hand-powered tools;
- (ii) Property with a useful life of less than one year;
- (iii) Buildings; and

(iv) Those building fixtures that are not an integral and necessary part of a research and development operation and that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) "Primarily" means greater than fifty percent as measured by time. If machinery and equipment is used simultaneously in a research and development operation and also for other purposes, the use for other purposes must be disregarded during the period of simultaneous use for purposes of determining whether the machinery and equipment is used primarily in a research and development operation.

(d) "Public research institution" means any college or university included within the definitions of state universities, regional universities, or state college in RCW 28B.10.016.

(e) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010. [2011 c 23 § 4.]

Effective date—2011 c 23: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 11, 2011]." [2011 c 23 § 8.]

Construction—2011 c 23: "Nothing in this act may be construed as a repudiation of any provision of WAC 458-20-13601." [2011 c 23 § 11.]

Findings—2011 c 23: See note following RCW 82.08.02565.

82.08.0273 Exemptions—Sales to nonresidents of tangible personal property, digital goods, and digital codes for use outside the state—Proof of nonresident status—Penalties. (1) The tax levied by RCW 82.08.020 does not apply to sales to nonresidents of this state of tangible personal property, digital goods, and digital codes, when:

(a) The property is for use outside this state;

(b) The purchaser is a bona fide resident of a province or territory of Canada or a state, territory, or possession of the United States, other than the state of Washington; and

(i) Such state, possession, territory, or province does not impose, or have imposed on its behalf, a generally applicable retail sales tax, use tax, value added tax, gross receipts tax on retailing activities, or similar generally applicable tax, of three percent or more; or

(ii) If imposing a tax described in (b)(i) of this subsection, provides an exemption for sales to Washington residents by reason of their residence; and

(c) The purchaser agrees, when requested, to grant the department of revenue access to such records and other forms of verification at his or her place of residence to assure that such purchases are not first used substantially in the state of Washington.

(2) Notwithstanding anything to the contrary in this chapter, if parts or other tangible personal property are installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a separate charge for the tangible personal property, the tax levied by RCW 82.08.020 does not apply to the separately stated charge to a nonresident purchaser for the tangible personal property but only if the separately stated charge does not exceed either the seller's current publicly stated retail price for the tangible personal property or, if no publicly stated retail price is available, the seller's cost for the tangible personal property. However, the exemption provided by this section does not apply if tangible personal property is installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a single nonitemized

charge for providing the tangible personal property and service. All of the requirements in subsections (1) and (3) through (6) of this section apply to this subsection.

(3)(a) Any person claiming exemption from retail sales tax under the provisions of this section must display proof of his or her current nonresident status as provided in this section.

(b) Acceptable proof of a nonresident person's status includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (3)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(c) In lieu of furnishing proof of a person's nonresident status under (b) of this subsection (3), a person claiming exemption from retail sales tax under the provisions of this section may provide the seller with an exemption certificate in compliance with subsection (4)(b) of this section.

(4)(a) Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor must examine the purchaser's proof of nonresidence, determine whether the proof is acceptable under subsection (3)(b) of this section, and maintain records for each nontaxable sale which shall show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(b) In lieu of using the method provided in (a) of this subsection to document an exempt sale to a nonresident, a seller may accept from the purchaser a properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board or any other exemption certificate as may be authorized by the department and properly completed by the purchaser. A nonresident purchaser who uses an exemption certificate authorized in this subsection (4)(b) must include the purchaser's driver's license number or other state-issued identification number and the state of issuance.

(c) In lieu of using the methods provided in (a) and (b) of this subsection to document an exempt sale to a nonresident, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement.

(5)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(6)(a) Any vendor who makes sales without collecting the tax and who fails to maintain records of sales to nonresidents as provided in this section is personally liable for the amount of tax due.

(b) Any vendor who makes sales without collecting the retail sales tax under this section and who has actual knowledge that the purchaser's proof of identification establishing out-of-state residency is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the purchaser and the vendor are liable for any penalties and interest assessable under chapter 82.32 RCW. [2011 c 7 § 1; 2010 c 106 § 215; 2009 c 535 § 512; 2007 c 135 § 2; 2003 c 53 § 399; 1993 c 444 § 1; 1988 c 96 § 1; 1982 1st ex.s. c 5 § 1; 1980 c 37 § 39. Formerly RCW 82.08.030(21).]

Effective date—2011 c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 c 7 § 2.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

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

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.08.0297 Exemptions—Sales of food purchased under the supplemental nutrition assistance program. (1) The tax levied by RCW 82.08.020 does not apply to sales of eligible foods that are purchased with benefits under the supplemental nutrition assistance program or successor program, notwithstanding anything to the contrary in RCW 82.08.0293.

(2) When a purchase of eligible foods is made with a combination of benefits under the supplemental nutrition assistance program or successor program and cash, check, or similar payment, the cash, check, or similar payment must be applied first to food products exempt from tax under RCW 82.08.0293 whenever possible.

(3) As used in this section:

(a) "Eligible foods" means foods that are eligible for purchase with benefits under the supplemental nutrition assistance program or successor program.

(b) "Supplemental nutrition assistance program" refers to a food assistance program that is administered, at the federal level, by the United States department of agriculture, and was formerly known as the food stamp program. [2011 c 174 § 103; 1998 c 79 § 18; 1987 c 28 § 1.]

Additional notes found at www.leg.wa.gov

82.08.160 Remittance of tax—Liquor excise tax fund created. (1) On or before the twenty-fifth day of each month, all taxes collected under RCW 82.08.150 during the preceding month must be remitted to the state department of revenue, to be deposited with the state treasurer. Except as provided in subsection (2) of this section, upon receipt of such moneys the state treasurer must credit sixty-five percent of the sums collected and remitted under RCW 82.08.150 (1) and (2) and one hundred percent of the sums collected and

remitted under RCW 82.08.150 (3) and (4) to the state general fund and thirty-five percent of the sums collected and remitted under RCW 82.08.150 (1) and (2) to a fund which is hereby created to be known as the "liquor excise tax fund."

(2) During the 2011-2013 fiscal biennium, 66.19 percent of the sums collected and remitted under RCW 82.08.150 (1) and (2) must be deposited in the state general fund and the remainder collected and remitted under RCW 82.08.150 (1) and (2) must be deposited in the liquor excise tax fund. [2011 1st sp.s. c 50 § 969; 1982 1st ex.s. c 35 § 4; 1981 1st ex.s. c 5 § 26; 1969 ex.s. c 21 § 12; 1961 c 15 § 82.08.160. Prior: 1955 c 396 § 2.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Additional notes found at www.leg.wa.gov

82.08.805 Exemptions—Personal property used at an aluminum smelter. (1) A person who has paid tax under RCW 82.08.020 for personal property used at an aluminum smelter, tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. A person claiming an exemption must pay the tax and may then take a credit equal to the state share of retail sales tax paid under RCW 82.08.020. The person must submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) A person claiming the tax preference provided in this section must file a complete annual report with the department under RCW 82.32.534.

(4) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2017. [2011 c 174 § 303. Prior: 2010 1st sp.s. c 2 § 3; 2010 c 114 § 122; 2009 c 535 § 513; 2006 c 182 § 3; 2004 c 24 § 10.]

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

82.08.806 Exemptions—Sale of computer equipment parts and services to printer or publisher. (1) The tax levied by RCW 82.08.020 does not apply to sales, to a printer or publisher, of computer equipment, including repair parts and replacement parts for such equipment, when the computer equipment is used primarily in the printing or publishing of any printed material, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment. This exemption applies only to computer equipment not otherwise exempt under RCW 82.08.02565.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eli-

gibility under this section. This exemption is available only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection (3) apply throughout this section, unless the context clearly requires otherwise.

(a) "Computer" has the same meaning as in RCW 82.04.215.

(b) "Computer equipment" means a computer and the associated physical components that constitute a computer system, including monitors, keyboards, printers, modems, scanners, pointing devices, and other computer peripheral equipment, cables, servers, and routers. "Computer equipment" also includes digital cameras and computer software.

(c) "Computer software" has the same meaning as in RCW 82.04.215.

(d) "Primarily" means greater than fifty percent as measured by time.

(e) "Printer or publisher" means a person, as defined in RCW 82.04.030, who is subject to tax under RCW *82.04.260(13) or 82.04.280(1)(a).

(4) "Computer equipment" does not include computer equipment that is used primarily for administrative purposes including but not limited to payroll processing, accounting, customer service, telemarketing, and collection. If computer equipment is used simultaneously for administrative and non-administrative purposes, the administrative use must be disregarded during the period of simultaneous use for purposes of determining whether the computer equipment is used primarily for administrative purposes. [2011 c 174 § 204; 2010 1st sp.s. c 23 § 516; 2009 c 461 § 5; 2004 c 8 § 2.]

***Reviser's note:** RCW 82.04.260 was amended by 2011 c 2 § 203 (Initiative Measure No. 1107), changing subsection (13) to subsection (14).

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Effective date—Contingent effective date—2009 c 461: See note following RCW 82.04.280.

Findings—Intent—2004 c 8: "(1) The legislature finds that the manufacturer's machinery and equipment sales and use tax exemption is vital to the continued development of economic opportunity in this state, including the development of new businesses and the expansion or modernization of existing businesses.

(2) The legislature finds that the printing and publishing industries have not been able to realize the benefits of the manufacturer's machinery and equipment sales and use tax exemption to the same extent as other manufacturing industries due to dramatic changes in business methods caused by computer technology not contemplated when the manufacturer's machinery and equipment sales and use tax exemption was adopted. As a result of these changes in business methods, a substantial amount of computer equipment used by printers and publishers is not eligible for the manufacturer's machinery and equipment sales and use tax exemption because the computer equipment is not used within the manufacturing site.

(3) The legislature further finds that additional incentives for printers and publishers need to be adopted to provide these industries with similar benefits as the manufacturer's machinery and equipment sales and use tax exemption provides for other manufacturing industries, and in recognition of the rapid rate of technological advancement in business methods undergone by the printing and publishing industries. The legislature intends to accomplish this by providing a sales and use tax exemption to printers and publishers for computer equipment, not otherwise eligible for the manufacturer's machinery and equipment sales and use tax exemption, used primarily in the printing or publishing of printed material, and for labor and services ren-

dered in respect to installing, repairing, cleaning, altering, or improving such computer equipment." [2004 c 8 § 1.]

82.08.820 Exemptions—Remittance—Warehouse and grain elevators and distribution centers—Material-handling and racking equipment—Construction of warehouse or elevator—Information sheet—Rules—Records—Exceptions. (Effective until July 1, 2012.) (1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators and retailers who own or operate distribution centers, and who have paid the tax levied by RCW 82.08.020 on:

(a) Material-handling and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Construction of a warehouse or grain elevator, including materials, and including service and labor costs, are eligible for an exemption in the form of a remittance. The amount of the remittance is computed under subsection (3) of this section and is based on the state share of sales tax.

(2) For purposes of this section and RCW 82.12.820:

(a) "Agricultural products" has the meaning given in RCW 82.04.213;

(b) "Cold storage warehouse" has the meaning provided in RCW 82.74.010;

(c) "Construction" means the actual construction of a warehouse or grain elevator that did not exist before the construction began. "Construction" includes expansion if the expansion adds at least twenty-five thousand square feet of additional space to an existing cold storage warehouse, at least two hundred thousand square feet of additional space to an existing warehouse other than a cold storage warehouse, or additional storage capacity of at least one million bushels to an existing grain elevator. "Construction" does not include renovation, remodeling, or repair;

(d) "Department" means the department of revenue;

(e) "Distribution center" means a warehouse that is used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer. "Distribution center" does not include a warehouse at which retail sales occur;

(f) "Finished goods" means tangible personal property intended for sale by a retailer or wholesaler. "Finished goods" does not include agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product. "Finished goods" does not include logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk;

(g) "Grain elevator" means a structure used for storage and handling of grain in bulk;

(h) "Material-handling equipment and racking equipment" means equipment in a warehouse or grain elevator that is primarily used to handle, store, organize, convey, package, or repack finished goods. The term includes tangible personal property with a useful life of one year or more that becomes an ingredient or component of the equipment, including repair and replacement parts. The term does not include equipment in offices, lunchrooms, restrooms, and other like space, within a warehouse or grain elevator, or equipment used for nonwarehousing purposes. "Material-

handling equipment" includes but is not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots; mechanized systems, including containers that are an integral part of the system, whose purpose is to lift or move tangible personal property; and automated handling, storage, and retrieval systems, including computers that control them, whose purpose is to lift or move tangible personal property; and forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets. "Racking equipment" includes, but is not limited to, conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices that form a necessary part of the storage system;

(i) "Person" has the meaning given in RCW 82.04.030;

(j) "Retailer" means a person who makes "sales at retail" as defined in chapter 82.04 RCW of tangible personal property;

(k) "Square footage" means the product of the two horizontal dimensions of each floor of a specific warehouse. The entire footprint of the warehouse shall be measured in calculating the square footage, including space that juts out from the building profile such as loading docks. "Square footage" does not mean the aggregate of the square footage of more than one warehouse at a location or the aggregate of the square footage of warehouses at more than one location;

(l) "Third-party warehouse" means a person taxable under RCW 82.04.280(1)(d);

(m) "Warehouse" means an enclosed building or structure in which finished goods are stored. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse as are loading docks and other such space attached to the building and used for handling of finished goods. Landscaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is a building in which manufacturing takes place; and

(n) "Wholesaler" means a person who makes "sales at wholesale" as defined in chapter 82.04 RCW of tangible personal property, but "wholesaler" does not include a person who makes sales exempt under RCW 82.04.330.

(3)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.08.020. The buyer may then apply to the department for remittance of all or part of the tax paid under RCW 82.08.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand or more, other than cold storage warehouses, and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment. For cold storage warehouses with square footage of twenty-five thousand or more, the remittance is equal to one hundred percent

of the amount of tax paid for qualifying construction, materials, service, and labor, and one hundred percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses and grain elevators; and construction invoices and documents.

(c) The department shall on a quarterly basis remit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(4) Warehouses, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Warehouses and grain elevators upon which construction was initiated before May 20, 1997, are not eligible for a remittance under this section.

(5) The lessor or owner of a warehouse or grain elevator is not eligible for a remittance under this section unless the underlying ownership of the warehouse or grain elevator and the material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the remittance to the lessee in the form of reduced rent payments. [2011 c 174 § 205; 2006 c 354 § 11; 2005 c 513 § 11; 1997 c 450 § 2.]

Expiration date—2011 c 174 § 205: "Section 205 of this act expires July 1, 2012." [2011 c 174 § 502.]

Expiration date—2006 c 354 § 11: "Section 11 of this act expires July 1, 2012." [2006 c 354 § 20.]

Effective dates—2006 c 354: See note following RCW 82.04.4268.

Effective dates—2005 c 513: See note following RCW 82.04.4266.

Findings—Intent—1997 c 450: "The legislature finds that the state's overall economic health and prosperity is bolstered through tax incentives targeted to specific industries. The warehouse and distribution industry is critical to other businesses. The transportation sector, the retail sector, the ports, and the wholesalers all rely on the warehouse and distribution industry. It is the intent of the legislature to stimulate interstate trade by providing tax incentives to those persons in the warehouse and distribution industry engaged in highly competitive trade." [1997 c 450 § 1.]

Additional notes found at www.leg.wa.gov

82.08.820 Exemptions—Remittance—Warehouse and grain elevators and distribution centers—Material-handling and racking equipment—Construction of warehouse or elevator—Information sheet—Rules—Records—Exceptions. (Effective July 1, 2012.) (1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators and retailers who own or operate

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distribution centers, and who have paid the tax levied by RCW 82.08.020 on:

(a) Material-handling and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Construction of a warehouse or grain elevator, including materials, and including service and labor costs, are eligible for an exemption in the form of a remittance. The amount of the remittance is computed under subsection (3) of this section and is based on the state share of sales tax.

(2) For purposes of this section and RCW 82.12.820:

(a) "Agricultural products" has the meaning given in RCW 82.04.213;

(b) "Construction" means the actual construction of a warehouse or grain elevator that did not exist before the construction began. "Construction" includes expansion if the expansion adds at least two hundred thousand square feet of additional space to an existing warehouse or additional storage capacity of at least one million bushels to an existing grain elevator. "Construction" does not include renovation, remodeling, or repair;

(c) "Department" means the department of revenue;

(d) "Distribution center" means a warehouse that is used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer. "Distribution center" does not include a warehouse at which retail sales occur;

(e) "Finished goods" means tangible personal property intended for sale by a retailer or wholesaler. "Finished goods" does not include agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product. "Finished goods" does not include logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk;

(f) "Grain elevator" means a structure used for storage and handling of grain in bulk;

(g) "Material-handling equipment and racking equipment" means equipment in a warehouse or grain elevator that is primarily used to handle, store, organize, convey, package, or repackage finished goods. The term includes tangible personal property with a useful life of one year or more that becomes an ingredient or component of the equipment, including repair and replacement parts. The term does not include equipment in offices, lunchrooms, restrooms, and other like space, within a warehouse or grain elevator, or equipment used for nonwarehousing purposes. "Material-handling equipment" includes but is not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots; mechanized systems, including containers that are an integral part of the system, whose purpose is to lift or move tangible personal property; and automated handling, storage, and retrieval systems, including computers that control them, whose purpose is to lift or move tangible personal property; and forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets. "Racking equipment" includes, but is not limited to, conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices that form a necessary part of the storage system;

(h) "Person" has the meaning given in RCW 82.04.030;

(i) "Retailer" means a person who makes "sales at retail" as defined in chapter 82.04 RCW of tangible personal property;

(j) "Square footage" means the product of the two horizontal dimensions of each floor of a specific warehouse. The entire footprint of the warehouse shall be measured in calculating the square footage, including space that juts out from the building profile such as loading docks. "Square footage" does not mean the aggregate of the square footage of more than one warehouse at a location or the aggregate of the square footage of warehouses at more than one location;

(k) "Third-party warehouse" means a person taxable under RCW 82.04.280(1)(d);

(l) "Warehouse" means an enclosed building or structure in which finished goods are stored. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse as are loading docks and other such space attached to the building and used for handling of finished goods. Landscaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is a building in which manufacturing takes place; and

(m) "Wholesaler" means a person who makes "sales at wholesale" as defined in chapter 82.04 RCW of tangible personal property, but "wholesaler" does not include a person who makes sales exempt under RCW 82.04.330.

(3)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.08.020. The buyer may then apply to the department for remittance of all or part of the tax paid under RCW 82.08.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand or more and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses and grain elevators; and construction invoices and documents.

(c) The department shall on a quarterly basis remit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(4) Warehouses, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Warehouses and grain elevators upon which construction was initiated before May 20, 1997, are not eligible for a remittance under this section.

(5) The lessor or owner of a warehouse or grain elevator is not eligible for a remittance under this section unless the underlying ownership of the warehouse or grain elevator and the material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the remittance to the lessee in the form of reduced rent payments. [2011 c 174 § 206; 2006 c 354 § 12; 2005 c 513 § 11; 1997 c 450 § 2.]

Effective date—2011 c 174 § 206: "Section 206 of this act takes effect July 1, 2012." [2011 c 174 § 501.]

Effective dates—2006 c 354: See note following RCW 82.04.4268.

Effective dates—2005 c 513: See note following RCW 82.04.4266.

Findings—Intent—1997 c 450: "The legislature finds that the state's overall economic health and prosperity is bolstered through tax incentives targeted to specific industries. The warehouse and distribution industry is critical to other businesses. The transportation sector, the retail sector, the ports, and the wholesalers all rely on the warehouse and distribution industry. It is the intent of the legislature to stimulate interstate trade by providing tax incentives to those persons in the warehouse and distribution industry engaged in highly competitive trade." [1997 c 450 § 1.]

Additional notes found at www.leg.wa.gov

82.08.991 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.08.992 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.08.999 Exemptions—Joint municipal utility services authorities. The tax levied by RCW 82.08.020 shall not apply to any sales, or transfers made, to or from a joint municipal utility services authority formed under chapter 39.106 RCW and any of its members. [2011 c 258 § 12.]

Short title—Purpose—Intent—2011 c 258: See RCW 39.106.010.

82.08.9995 Exemptions—Restaurant employee meals. (1) The tax levied by RCW 82.08.020 does not apply to a meal provided without specific charge to an employee by a restaurant.

(2) For the purposes of this section, the following definitions apply unless the context clearly requires otherwise.

(a) "Meal" means one or more items of prepared food or beverages other than alcoholic beverages. For the purposes of this subsection, "alcoholic beverage" and "prepared food" have the same meanings as provided in RCW 82.08.0293.

(b) "Restaurant" means any establishment having special space and accommodation where food and beverages are regularly sold to the public for immediate, but not necessarily on-site, consumption, but excluding grocery stores, mini-markets, and convenience stores. Restaurant includes, but is not limited to, lunch counters, diners, coffee shops, espresso shops or bars, concession stands or counters, delica-

tessens, and cafeterias. It also includes space and accommodations where food and beverages are sold to the public for immediate consumption that are located within hotels, motels, lodges, boarding houses, bed and breakfast facilities, hospitals, office buildings, movie theaters, and schools, colleges, or universities, if a separate charge is made for such food or beverages. Mobile sales units that sell food or beverages for immediate consumption within a place, the entrance to which is subject to an admission charge, are "restaurants." So too are public and private carriers, such as trains and vessels, that sell food or beverages for immediate consumption if a separate charge for the food and/or beverages is made. A restaurant is open to the public for purposes of this section if members of the public can be served as guests. "Restaurant" does not include businesses making sales through vending machines or through mobile sales units such as catering trucks or sidewalk vendors of food or beverage items. [2011 c 55 § 2.]

Effective date—2011 c 55: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 c 55 § 4.]

Chapter 82.12 RCW USE TAX

Sections

82.12.022	Natural or manufactured gas—Use tax imposed—Exemption.
82.12.02525	Exemptions—Sale of copied public records by state and local agencies. (<i>Effective January 1, 2012.</i>)
82.12.0256	Exemptions—Use of motor vehicle and special fuel—Conditions.
82.12.025651	Exemptions—Use of machinery and equipment by public research institutions.
82.12.0297	Exemptions—Use of food purchased under the supplemental nutrition assistance program.
82.12.040	Retailers to collect tax—Penalty—Contingent expiration of subsection.
82.12.800	Exemptions—Uses of vessel, vessel's trailer by manufacturer.
82.12.801	Exemptions—Uses of vessel, vessel's trailer by dealer.
82.12.805	Exemptions—Personal property used at an aluminum smelter.
82.12.991	Repealed.
82.12.992	Repealed.
82.12.999	Exemptions—Joint municipal utility services authorities.
82.12.9995	Exemptions—Restaurant employee meals.

82.12.022 Natural or manufactured gas—Use tax imposed—Exemption. (1) A use tax is levied on every person in this state for the privilege of using natural gas or manufactured gas within this state as a consumer.

(2) The tax must be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(2) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section does not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section does not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 82.16.020 with respect to the gas for which exemption is sought under this subsection.

(5)(a) The tax levied in this section does not apply to the use of natural or manufactured gas by an aluminum smelter as that term is defined in RCW 82.04.217 before January 1, 2017.

(b) A person claiming the exemption provided in this subsection (5) must file a complete annual report with the department under RCW 82.32.534.

(6) There is a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(7) The use tax imposed in this section must be paid by the consumer to the department.

(8) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report must contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department may require by rule.

(9) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989. [2011 c 174 § 304. Prior: 2010 1st sp.s. c 2 § 5; 2010 c 114 § 127; 2006 c 182 § 5; 2004 c 24 § 12; 1994 c 124 § 9; 1989 c 384 § 3.]

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

Intent—1989 c 384: "Due to a change in the federal regulations governing the sale of brokered natural gas, cities have lost significant revenues from the utility tax on natural gas. It is therefore the intent of the legislature to adjust the utility and use tax authority of the state and cities to maintain this revenue source for the municipalities and provide equality of taxation between intrastate and interstate transactions." [1989 c 384 § 1.]

Additional notes found at www.leg.wa.gov

82.12.02525 Exemptions—Sale of copied public records by state and local agencies. (*Effective January 1, 2012.*) The provisions of this chapter do not apply with respect to the use of public records sold by state and local agencies, as the terms are defined in RCW 42.56.010, including public records transferred electronically that are obtained under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts. [2011 c 60 § 50; 2009 c 535 § 609; 1996 c 63 § 2.]

Effective date—2011 c 60: See RCW 42.17A.919.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Additional notes found at www.leg.wa.gov

82.12.0256 Exemptions—Use of motor vehicle and special fuel—Conditions. The provisions of this chapter shall not apply in respect to the use of:

(1) Special fuel purchased in this state upon which a refund is obtained as provided in RCW 82.38.180(2); and

(2) Motor vehicle and special fuel if:

(a) The fuel is used for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(1)(h); or

(c) The fuel is purchased by a public transportation benefit area created under chapter 36.57A RCW or a county-owned ferry or county ferry district created under chapter 36.54 RCW for use in passenger-only ferry vessels; or

(d) The fuel is taxable under chapter 82.36 or 82.38 RCW: PROVIDED, That the use of motor vehicle and special fuel upon which a refund of the applicable fuel tax is obtained shall not be exempt under this subsection (2)(d), and the director of licensing shall deduct from the amount of such tax to be refunded the amount of tax due under this chapter and remit the same each month to the department of revenue; or

(e) The fuel is purchased by a county-owned ferry for use in ferry vessels after June 30, 2013; or

(f) The fuel is purchased by the Washington state ferry system for use in a state-owned ferry after June 30, 2013. [2011 1st sp.s. c 16 § 5; 2007 c 223 § 10; 2005 c 443 § 6; 1998 c 176 § 5. Prior: 1983 1st ex.s. c 35 § 3; 1983 c 108 § 2; 1980 c 147 § 2; 1980 c 37 § 56. Formerly RCW 82.12.030(6).]

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

Effective date—2007 c 223: See note following RCW 36.57A.220.

Finding—Intent—Effective date—2005 c 443: See notes following RCW 82.08.0255.

Rules—Findings—Effective date—1998 c 176: See RCW 82.36.800, 82.36.900, and 82.36.901.

Intent—1983 1st ex.s. c 35: See note following RCW 82.08.0255.

Intent—1980 c 37: See note following RCW 82.04.4281.

Diesel, biodiesel, and aircraft fuel sales tax exemption for farmers: RCW 82.12.865.

82.12.025651 Exemptions—Use of machinery and equipment by public research institutions. (1) The provisions of this chapter do not apply in respect to the use by a public research institution of machinery and equipment used primarily in a research and development operation, or to the use of labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.

(2) The definitions in RCW 82.08.025651 apply to this section.

(3) A public research institution receiving the benefit of the exemption provided in this section must file a complete

annual survey with the department under RCW 82.32.585. [2011 c 23 § 5.]

Findings—2011 c 23: See note following RCW 82.08.02565.

Effective date—Construction—2011 c 23: See notes following RCW 82.08.025651.

82.12.0297 Exemptions—Use of food purchased under the supplemental nutrition assistance program. (1)

The provisions of this chapter do not apply with respect to the use of eligible foods that are purchased with benefits under the supplemental nutrition assistance program or successor program, notwithstanding anything to the contrary in RCW 82.12.0293.

(2) The definitions in RCW 82.08.0297 apply to this section. [2011 c 174 § 104; 1998 c 79 § 19; 1987 c 28 § 2.]

Additional notes found at www.leg.wa.gov

82.12.040 Retailers to collect tax—Penalty—Contingent expiration of subsection. (1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, shall obtain from the department a certificate of registration, and shall, at the time of making sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section must be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. For the purposes of this chapter, the phrase "maintains in this state a place of business" shall include the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department must in rules specify activities which constitute engaging in business activity within this state, and must keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), of his or her principals for use in this state, must, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this chapter, and for that purpose is deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter is deemed to be held in trust by the retailer until paid to the department, and any retailer who appropriates or converts the tax collected to the retailer's own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment

on the due date as prescribed is guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is nevertheless personally liable to the state for the amount of such tax, unless the seller has taken from the buyer a copy of a direct pay permit issued under RCW 82.32.087.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter is guilty of a misdemeanor.

(5) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

- (i) The storage, dissemination, or display of advertising;
- (ii) The taking of orders; or
- (iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(6) Subsection (5) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

(7) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the person would have been obligated to collect retail sales tax on the sale absent a specific exemption provided in chapter 82.08 RCW, and there is no corresponding use tax exemption in this chapter. Nothing in this subsection (7) may be construed as relieving purchasers from liability for reporting and remitting the tax due under this chapter directly to the department.

(8) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the state is prohibited under the Constitution or laws of the United States from requiring the person to collect the tax imposed by this chapter. [2011 1st sp.s. c 20 § 103; 2010 c 106 § 221; 2009 c 535 § 1108; 2005 c 514 § 109. Prior: 2003 c 168 § 215; 2003 c 76 § 4; 2001 c 188 § 5; 1986 c 48 § 1; 1971 ex.s. c 299 § 11; 1961 c 293 § 11; 1961 c 15 § 82.12.040; prior: 1955 c 389 § 27; 1945 c 249 § 7; 1941 c 178 § 10; 1939 c 225 § 16; Rem. Supp. 1945 § 8370-33; prior: 1935 c 180 § 33.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

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Intent—2003 c 76: See note following RCW 82.04.424.

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Project on exemption reporting requirements: RCW 82.32.440.

Additional notes found at www.leg.wa.gov

82.12.800 Exemptions—Uses of vessel, vessel's trailer by manufacturer. (1) The tax imposed under RCW 82.12.020 shall not apply to the following uses of a vessel, as defined in RCW 88.02.310, by the manufacturer of the vessel:

(a) Activities to test, set-up, repair, remodel, evaluate, or otherwise make a vessel seaworthy, to include performance, endurance, and sink testing, if the vessel is to be held for sale;

(b) Training activities of a manufacturer's employees, agents, or subcontractors involved in the development and manufacturing of the manufacturer's vessels, if the vessel is to be held for sale;

(c) Activities to promote the sale of the manufacturer's vessels, to include photography and video sessions to be used in promotional materials; traveling directly to and from vessel promotional events for the express purpose of displaying a manufacturer's vessels;

(d) Any vessels loaned or donated to a civic, religious, nonprofit, or educational organization for continuous periods of use not exceeding seventy-two hours, or longer if approved by the department; or to vessels loaned or donated to governmental entities;

(e) Direct transporting, displaying, or demonstrating any vessel at a wholesale or retail vessel show;

(f) Delivery of a vessel to a buyer, vessel manufacturer, registered vessel dealer as defined in RCW 88.02.310, or to any other person involved in the manufacturing or sale of that vessel for the purpose of the manufacturing or sale of that vessel; and

(g) Displaying, showing, and operating a vessel for sale to a prospective buyer to include the short-term testing, operating, and examining by a prospective buyer.

(2) Subsection (1) of this section shall apply to any trailer or other similar apparatus used to transport, display, show, or operate a vessel, if the trailer or other similar apparatus is held for sale. [2011 c 171 § 121; 1997 c 293 § 1.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

82.12.801 Exemptions—Uses of vessel, vessel's trailer by dealer. (1) The tax imposed under RCW 82.12.020 shall not apply to the following uses of a vessel, as defined in RCW 88.02.310, by a vessel dealer registered under chapter 88.02 RCW:

(a) Activities to test, set-up, repair, remodel, evaluate, or otherwise make a vessel seaworthy, if the vessel is held for sale;

(b) Training activity of a dealer's employees, agents, or subcontractors involved in the sale of the dealer's vessels, if the vessel is held for sale;

(c) Activities to promote the sale of the dealer's vessels, to include photography and video sessions to be used in promotional materials; traveling directly to and from promotional vessel events for the express purpose of displaying a dealer's vessels for sale, provided it is displayed on the vessel

that it is, in fact, for sale and the identification of the registered vessel dealer offering the vessel for sale is also displayed on the vessel;

(d) Any vessel loaned or donated to a civic, religious, nonprofit, or educational organization for continuous periods of use not exceeding seventy-two hours, or longer if approved by the department; or to vessels loaned or donated to governmental entities;

(e) Direct transporting, displaying, or demonstrating any vessel at a wholesale or retail vessel show;

(f) Delivery of a vessel to a buyer, vessel manufacturer, registered vessel dealer as defined in RCW 88.02.310, or to any other person involved in the manufacturing or sale of that vessel for the purpose of the manufacturing or sale of that vessel; and

(g) Displaying, showing, and operating a vessel for sale to a prospective buyer to include the short-term testing, operating, and examining by a prospective buyer.

(2) Subsection (1) of this section shall apply to any trailer or other similar apparatus used to transport, display, show, or operate a vessel, if the trailer or other similar apparatus is held for sale. [2011 c 171 § 122; 1997 c 293 § 2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

82.12.805 Exemptions—Personal property used at an aluminum smelter. (1) A person who is subject to tax under RCW 82.12.020 for personal property used at an aluminum smelter, or for tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. The amount of the credit equals the state share of use tax computed to be due under RCW 82.12.020. The person must submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) A person reporting under the tax rate provided in this section must file a complete annual report with the department under RCW 82.32.534.

(4) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2017. [2011 c 174 § 305. Prior: 2010 1st sp.s. c 2 § 4; 2010 c 114 § 128; 2009 c 535 § 620; 2006 c 182 § 4; 2004 c 24 § 11.]

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

82.12.991 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.12.992 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.12.999 Exemptions—Joint municipal utility services authorities. The tax levied by RCW 82.12.020 shall not apply to any sales, or uses by, or transfers made, to or from a joint municipal utility services authority formed under chapter 39.106 RCW and any of its members. [2011 c 258 § 13.]

Short title—Purpose—Intent—2011 c 258: See RCW 39.106.010.

82.12.9995 Exemptions—Restaurant employee meals. (1) The provisions of this chapter do not apply in respect to a meal provided without specific charge to an employee by a restaurant.

(2) For the purposes of this section, the definitions in RCW 82.08.9995 apply. [2011 c 55 § 3.]

Effective date—2011 c 55: See note following RCW 82.08.9995.

Chapter 82.14 RCW

LOCAL RETAIL SALES AND USE TAXES

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82.14.049 Sales and use tax for public sports facilities—Tax upon retail rental car rentals. (1) The legislative authority of any county may impose a sales and use tax, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the county that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax is one percent of the selling price in the case of a sales tax or rental value of the vehicle in the case of a use tax. Proceeds of the tax may not be used to subsidize any professional sports team and must be used solely for the following purposes:

(a) Acquiring, constructing, maintaining, or operating public sports stadium facilities;

(b) Engineering, planning, financial, legal, or professional services incidental to public sports stadium facilities;

(c) Youth or amateur sport activities or facilities; or

(d) Debt or refinancing debt issued for the purposes of subsection (1) of this section.

(2) In a county of one million or more, at least seventy-five percent of the tax imposed under this section must be used to retire the debt on the stadium under *RCW 67.28.180(2)(b)(ii), until that debt is fully retired. [2011 c

174 § 107; 2008 c 264 § 4; 1997 c 220 § 502 (Referendum Bill No. 48, approved June 17, 1997); 1992 c 194 § 3.]

***Reviser's note:** RCW 62.28.180 was amended by 2011 1st sp.s. c 38 § 1, changing subsection (2)(b)(ii) to subsection (2)(b)(i)(B).

Findings—Intent—Effective date—2008 c 264: See notes following RCW 67.28.180.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Legislative intent—1992 c 194: See note following RCW 82.08.020.

Additional notes found at www.leg.wa.gov

82.14.310 County criminal justice assistance account—Transfers from general fund—Distributions based on crime rate and population—Limitations. (1)

The county criminal justice assistance account is created in the state treasury. Beginning in fiscal year 2000, the state treasurer must transfer into the county criminal justice assistance account from the general fund the sum of twenty-three million two hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer must increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year.

(2) The moneys deposited in the county criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under subsection (4) of this section, must be distributed at such times as distributions are made under *RCW 82.44.150 and on the relative basis of each county's funding factor as determined under this subsection.

(a) A county's funding factor is the sum of:

(i) The population of the county, divided by one thousand, and multiplied by two-tenths;

(ii) The crime rate of the county, multiplied by three-tenths; and

(iii) The annual number of criminal cases filed in the county superior court, for each one thousand in population, multiplied by five-tenths.

(b) Under this section and RCW 82.14.320 and 82.14.330:

(i) The population of the county or city is as last determined by the office of financial management;

(ii) The crime rate of the county or city is the annual occurrence of specified criminal offenses, as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs, for each one thousand in population;

(iii) The annual number of criminal cases filed in the county superior court must be determined by the most recent annual report of the courts of Washington, as published by the administrative office of the courts;

(iv) Distributions and eligibility for distributions in the 1989-1991 biennium must be based on 1988 figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection. Future distributions must be based on the most recent figures for both the crime

rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection.

(3) Moneys distributed under this section must be expended exclusively for criminal justice purposes and may not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil or juvenile justice system occurs, and which includes (a) domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020, and (b) during the 2001-2003 fiscal biennium, juvenile dispositional hearings relating to petitions for at-risk youth, truancy, and children in need of services. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(4) Not more than five percent of the funds deposited to the county criminal justice assistance account may be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements may not supplant existing funds from the state general fund.

(5) During the 2011-2013 fiscal biennium, the amount that would otherwise be transferred into the county criminal justice assistance account from the general fund under subsection (1) of this section must be reduced by 3.4 percent. [2011 1st sp.s. c 50 § 970; 2005 c 282 § 49; 2001 2nd sp.s. c 7 § 915; 1999 c 309 § 920; 1998 c 321 § 11 (Referendum Bill No. 49, approved November 3, 1998); 1995 c 398 § 11; 1993 sp.s. c 21 § 1; 1991 c 311 § 1; 1990 2nd ex.s. c 1 § 102.]

***Reviser's note:** RCW 82.44.150 was repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Additional notes found at www.leg.wa.gov

82.14.320 Municipal criminal justice assistance account—Transfers from general fund—Distributions criteria and formula—Limitations. (1)

The municipal criminal justice assistance account is created in the state treasury. Beginning in fiscal year 2000, the state treasurer must transfer into the municipal criminal justice assistance account for distribution under this section from the general fund the sum of four million six hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer must increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by

the office of financial management in November of the preceding year.

(2) No city may receive a distribution under this section from the municipal criminal justice assistance account unless:

(a) The city has a crime rate in excess of one hundred twenty-five percent of the statewide average as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs;

(b) The city has levied the tax authorized in RCW 82.14.030(2) at the maximum rate or the tax authorized in RCW 82.46.010(3) at the maximum rate; and

(c) The city has a per capita yield from the tax imposed under RCW 82.14.030(1) at the maximum rate of less than one hundred fifty percent of the statewide average per capita yield for all cities from such local sales and use tax.

(3) The moneys deposited in the municipal criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under subsection (7) of this section, must be distributed at such times as distributions are made under *RCW 82.44.150. The distributions must be made as follows:

(a) Unless reduced by this subsection, thirty percent of the moneys must be distributed ratably based on population as last determined by the office of financial management to those cities eligible under subsection (2) of this section that have a crime rate determined under subsection (2)(a) of this section which is greater than one hundred seventy-five percent of the statewide average crime rate. No city may receive more than fifty percent of any moneys distributed under this subsection (a) but, if a city distribution is reduced as a result of exceeding the fifty percent limitation, the amount not distributed must be distributed under (b) of this subsection.

(b) The remainder of the moneys, including any moneys not distributed in subsection (2)(a) of this section, must be distributed to all cities eligible under subsection (2) of this section ratably based on population as last determined by the office of financial management.

(4) No city may receive more than thirty percent of all moneys distributed under subsection (3) of this section.

(5) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), must be made to the county in which the city is located.

(6) Moneys distributed under this section must be expended exclusively for criminal justice purposes and may not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020, and publications and public educational efforts designed to provide information and assistance to parents in dealing with runaway or at-risk youth. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes.

Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(7) Not more than five percent of the funds deposited to the municipal criminal justice assistance account may be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements may not supplant existing funds from the state general fund.

(8) During the 2011-2013 fiscal biennium, the amount that would otherwise be transferred into the municipal criminal justice assistance account from the general fund under subsection (1) of this section must be reduced by 3.4 percent. [2011 1st sp.s. c 50 § 971; 1998 c 321 § 12 (Referendum Bill No. 49, approved November 3, 1998). Prior: 1995 c 398 § 12; 1995 c 312 § 84; 1993 sp.s. c 21 § 2; 1992 c 55 § 1; prior: 1991 sp.s. c 26 § 1; 1991 sp.s. c 13 § 30; 1990 2nd ex.s. c 1 § 104.]

***Reviser's note:** RCW 82.44.150 was repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Additional notes found at www.leg.wa.gov

82.14.330 Municipal criminal justice assistance account—Transfers from general fund—Distributions based on crime rate, population, and innovation—Limitations. (1)(a) Beginning in fiscal year 2000, the state treasurer must transfer into the municipal criminal justice assistance account for distribution under this section from the general fund the sum of four million six hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer must increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year. The moneys deposited in the municipal criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under subsection (4) of this section, must be distributed to the cities of the state as follows:

(i) Twenty percent appropriated for distribution must be distributed to cities with a three-year average violent crime rate for each one thousand in population in excess of one hundred fifty percent of the statewide three-year average violent crime rate for each one thousand in population. The three-year average violent crime rate must be calculated using the violent crime rates for each of the preceding three years from the annual reports on crime in Washington state as published by the Washington association of sheriffs and police chiefs. Moneys must be distributed under this subsection (1)(a) ratably based on population as last determined by the office of financial management, but no city may receive more than one dollar per capita. Moneys remaining undistributed under this subsection at the end of each calendar year must be distrib-

uted to the criminal justice training commission to reimburse participating city law enforcement agencies with ten or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training, as provided in RCW 43.101.200.

(ii) Sixteen percent must be distributed to cities ratably based on population as last determined by the office of financial management, but no city may receive less than one thousand dollars.

(b) The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection (1) must be distributed at such times as distributions are made under *RCW 82.44.150.

(c) Moneys distributed under this subsection (1) must be expended exclusively for criminal justice purposes and may not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(2)(a) In addition to the distributions under subsection (1) of this section:

(i) Ten percent must be distributed on a per capita basis to cities that contract with another governmental agency for the majority of the city's law enforcement services. Cities that subsequently qualify for this distribution must notify the department of commerce by November 30th for the upcoming calendar year. The department of commerce must provide a list of eligible cities to the state treasurer by December 31st. The state treasurer must modify the distribution of these funds in the following year. Cities have the responsibility to notify the department of commerce of any changes regarding these contractual relationships. Adjustments in the distribution formula to add or delete cities may be made only for the upcoming calendar year; no adjustments may be made retroactively.

(ii) The remaining fifty-four percent must be distributed to cities and towns by the state treasurer on a per capita basis. These funds must be used for: (A) Innovative law enforcement strategies; (B) programs to help at-risk children or child abuse victim response programs; and (C) programs designed to reduce the level of domestic violence or to provide counseling for domestic violence victims.

(b) The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection (2), less any moneys appropriated for purposes under subsection (4) of this section, must be distributed at the times as distributions are made under *RCW 82.44.150. Moneys remaining undistributed under this subsection at the end of each calendar year must be distributed to the criminal justice

training commission to reimburse participating city law enforcement agencies with ten or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training, as provided in RCW 43.101.200.

(c) If a city is found by the state auditor to have expended funds received under this subsection (2) in a manner that does not comply with the criteria under which the moneys were received, the city is ineligible to receive future distributions under this subsection (2) until the use of the moneys are justified to the satisfaction of the director or are repaid to the state general fund.

(3) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), must be made to the county in which the city is located.

(4) Not more than five percent of the funds deposited to the municipal criminal justice assistance account may be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements may not supplant existing funds from the state general fund.

(5) During the 2011-2013 fiscal biennium, the amount that would otherwise be transferred into the municipal criminal justice assistance account from the general fund under subsection (1) of this section must be reduced by 3.4 percent. [2011 1st sp.s. c 50 § 972; 2003 c 90 § 1; 1998 c 321 § 13 (Referendum Bill No. 49, approved November 3, 1998); 1995 c 398 § 13; 1994 c 273 § 22; 1993 sp.s. c 21 § 3; 1991 c 311 § 4; 1990 2nd ex.s. c 1 § 105.]

***Reviser's note:** RCW 82.44.150 was repealed by 2003 c 1 (Initiative Measure No. 776, approved November 5, 2002).

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Additional notes found at www.leg.wa.gov

82.14.380 Distressed county assistance account—Created—Distributions. (1) The distressed county assistance account is created in the state treasury. Into this account shall be placed a portion of all motor vehicle excise tax receipts as provided in *RCW 82.44.110. At such times as distributions are made under *RCW 82.44.150, the state treasurer shall distribute the funds in the distressed county assistance account to each county imposing the sales and use tax authorized under RCW 82.14.370 as of January 1, 1999, in the same proportions as distributions of the tax imposed under RCW 82.14.370 for these counties for the previous quarter.

(2) Funds distributed from the distressed county assistance account shall be expended by the counties for criminal justice and other purposes. During the 2009-2011 fiscal biennium, the legislature may transfer from the distressed county assistance account to the state general fund such amounts as reflect the excess fund balance of the account. [2011 c 5 § 920; 1999 c 311 § 201; 1998 c 321 § 10 (Referendum Bill No. 49, approved November 3, 1998).]

***Reviser's note:** RCW 82.44.110 and 82.44.150 were repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

Effective date—2011 c 5: See note following RCW 43.79.487.

Finding—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 311: See notes following RCW 82.14.370.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Additional notes found at www.leg.wa.gov

82.14.390 Sales and use tax for regional centers. (1)

Except as provided in subsection (7) of this section, the governing body of a public facilities district (a) created before July 31, 2002, under chapter 35.57 or 36.100 RCW that commences construction of a new regional center, or improvement or rehabilitation of an existing new regional center, before January 1, 2004; (b) created before July 1, 2006, under chapter 35.57 RCW in a county or counties in which there are no other public facilities districts on June 7, 2006, and in which the total population in the public facilities district is greater than ninety thousand that commences construction of a new regional center before February 1, 2007; (c) created under the authority of RCW 35.57.010(1)(d); or (d) created before September 1, 2007, under chapter 35.57 or 36.100 RCW, in a county or counties in which there are no other public facilities districts on July 22, 2007, and in which the total population in the public facilities district is greater than seventy thousand, that commences construction of a new regional center before January 1, 2009, or before January 1, 2011, in the case of a new regional center in a county designated by the president as a disaster area in December 2007, may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax may not exceed 0.033 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2)(a) The governing body of a public facilities district imposing a sales and use tax under the authority of this section may increase the rate of tax up to 0.037 percent if, within three fiscal years of July 1, 2008, the department determines that, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020, a public facilities district's sales and use tax collections for fiscal years after July 1, 2008, have been reduced by a net loss of at least 0.50 percent from the fiscal year before July 1, 2008. The fiscal year in which this section becomes effective is the first fiscal year after July 1, 2008.

(b) The department must determine sales and use tax collection net losses under this section as provided in RCW 82.14.500 (2) and (3). The department must provide written notice of its determinations to public facilities districts. Determinations by the department of a public facilities district's sales and use tax collection net losses as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020 are final and not appealable.

(c) A public facilities district may increase its rate of tax after it has received written notice from the department as provided in (b) of this subsection. The increase in the rate of

tax must be made in 0.001 percent increments and must be the least amount necessary to mitigate the net loss in sales and use tax collections as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020. The increase in the rate of tax is subject to RCW 82.14.055.

(3) The tax imposed under subsection (1) of this section must be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue must perform the collection of such taxes on behalf of the county at no cost to the public facilities district. During the 2011-2013 fiscal biennium, distributions by the state to a public facilities district based on the additional rate authorized in subsection (2) of this section must be reduced by 3.4 percent.

(4) No tax may be collected under this section before August 1, 2000. The tax imposed in this section expires when the bonds issued for the construction of the regional center and related parking facilities are retired, but not more than twenty-five years after the tax is first collected.

(5) Moneys collected under this section may only be used for the purposes set forth in RCW 35.57.020 and must be matched with an amount from other public or private sources equal to thirty-three percent of the amount collected under this section; however, amounts generated from non-voter approved taxes authorized under chapter 35.57 RCW or nonvoter approved taxes authorized under chapter 36.100 RCW do not constitute a public or private source. For the purpose of this section, public or private sources includes, but is not limited to cash or in-kind contributions used in all phases of the development or improvement of the regional center, land that is donated and used for the siting of the regional center, cash or in-kind contributions from public or private foundations, or amounts attributed to private sector partners as part of a public and private partnership agreement negotiated by the public facilities district.

(6) The combined total tax levied under this section may not be greater than 0.037 percent. If both a public facilities district created under chapter 35.57 RCW and a public facilities district created under chapter 36.100 RCW impose a tax under this section, the tax imposed by a public facilities district created under chapter 35.57 RCW must be credited against the tax imposed by a public facilities district created under chapter 36.100 RCW.

(7) A public facilities district created under chapter 36.100 RCW is not eligible to impose the tax under this section if the legislative authority of the county where the public facilities district is located has imposed a sales and use tax under RCW 82.14.0485 or 82.14.0494. [2011 1st sp.s. c 50 § 973; 2008 c 48 § 1. Prior: 2007 c 486 § 2; 2007 c 6 § 904; 2006 c 298 § 1; 2002 c 363 § 4; 1999 c 165 § 13.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2008 c 48: "This act takes effect July 1, 2008." [2008 c 48 § 2.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Additional notes found at www.leg.wa.gov

82.14.415 Sales and use tax for cities to offset municipal service costs to newly annexed areas. (1) The legislative authority of any city that is located in a county with a population greater than six hundred thousand that annexes an area consistent with its comprehensive plan required by chapter 36.70A RCW may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and is collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the city. The tax may only be imposed by a city if:

(a) The city has commenced annexation of an area having a population of at least ten thousand people, or four thousand in the case of a city described under subsection (3)(a)(i) of this section, prior to January 1, 2015; and

(b) The city legislative authority determines by resolution or ordinance that the projected cost to provide municipal services to the annexation area exceeds the projected general revenue that the city would otherwise receive from the annexation area on an annual basis.

(2) The tax authorized under this section is a credit against the state tax under chapter 82.08 or 82.12 RCW. The department of revenue must perform the collection of such taxes on behalf of the city at no cost to the city and must remit the tax to the city as provided in RCW 82.14.060.

(3)(a) Except as provided in (b) of this subsection, the maximum rate of tax any city may impose under this section is:

(i) 0.1 percent for each annexed area in which the population is greater than ten thousand and less than twenty thousand. The ten thousand population threshold in this subsection (3)(a)(i) is four thousand for a city with a population between one hundred fifteen thousand and one hundred forty thousand and located within a county with a population over one million five hundred thousand; and

(ii) 0.2 percent for an annexed area in which the population is greater than twenty thousand.

(b) Beginning July 1, 2011, the maximum rate of tax imposed under this section is 0.85 percent for an annexed area in which the population is greater than sixteen thousand if the annexed area was, prior to November 1, 2008, officially designated as a potential annexation area by more than one city, one of which has a population greater than four hundred thousand.

(4)(a) Except as provided in (b) of this subsection, the maximum cumulative rate of tax a city may impose under subsection (3)(a) of this section is 0.2 percent for the total number of annexed areas the city may annex.

(b) The maximum cumulative rate of tax a city may impose under subsection (3)(a) of this section is 0.3 percent, beginning July 1, 2011, if the city commenced annexation of an area, prior to January 1, 2010, that would have otherwise allowed the city to increase the rate of tax imposed under this section absent the rate limit imposed in (a) of this subsection.

(c) The maximum cumulative rate of tax a city may impose under subsection (3)(b) of this section is 0.85 percent for the single annexed area the city may annex and the amount of tax distributed to a city under subsection (3)(b) of this section may not exceed five million dollars per fiscal year.

(5) The tax imposed by this section may only be imposed at the beginning of a fiscal year and may continue for no more than ten years from the date that each increment of the tax is first imposed. Tax rate increases due to additional annexed areas are effective on July 1st of the fiscal year following the fiscal year in which the annexation occurred, provided that notice is given to the department as set forth in subsection (9) of this section.

(6) All revenue collected under this section may be used solely to provide, maintain, and operate municipal services for the annexation area.

(7) The revenues from the tax authorized in this section may not exceed that which the city deems necessary to generate revenue equal to the difference between the city's cost to provide, maintain, and operate municipal services for the annexation area and the general revenues that the cities would otherwise expect to receive from the annexation during a year. If the revenues from the tax authorized in this section and the revenues from the annexation area exceed the costs to the city to provide, maintain, and operate municipal services for the annexation area during a given year, the city must notify the department and the tax distributions authorized in this section must be suspended for the remainder of the year.

(8) No tax may be imposed under this section before July 1, 2007. Before imposing a tax under this section, the legislative authority of a city must adopt an ordinance that includes the following:

(a) A certification that the amount needed to provide municipal services to the annexed area reflects the city's true and actual costs;

(b) The rate of tax under this section that is imposed within the city; and

(c) The threshold amount for the first fiscal year following the annexation and passage of the ordinance.

(9) The tax must cease to be distributed to the city for the remainder of the fiscal year once the threshold amount has been reached. No later than March 1st of each year, the city must provide the department with a certification of the city's true and actual costs to provide municipal services to the annexed area, a new threshold amount for the next fiscal year, and notice of any applicable tax rate changes. Distributions of tax under this section must begin again on July 1st of the next fiscal year and continue until the new threshold amount has been reached or June 30th, whichever is sooner. Any revenue generated by the tax in excess of the threshold amount belongs to the state of Washington. Any amount resulting from the threshold amount less the total fiscal year distributions, as of June 30th, may not be carried forward to the next fiscal year.

(10) The tax must cease to be distributed to a city imposing the tax under subsection (3)(b) of this section for the remainder of the fiscal year, if the total distributions to the city imposing the tax exceed five million dollars for the fiscal year.

(11) The resident population of the annexation area must be determined in accordance with chapter 35.13 or 35A.14 RCW.

(12) The following definitions apply throughout this section unless the context clearly requires otherwise:

(a) "Annexation area" means an area that has been annexed to a city under chapter 35.13 or 35A.14 RCW.

"Annexation area" includes all territory described in the city resolution.

(b) "Commenced annexation" means the initiation of annexation proceedings has taken place under the direct petition method or the election method under chapter 35.13 or 35A.14 RCW.

(c) "Department" means the department of revenue.

(d) "Municipal services" means those services customarily provided to the public by city government.

(e) "Fiscal year" means the year beginning July 1st and ending the following June 30th.

(f) "Potential annexation area" means one or more geographic areas that a city has officially designated for potential future annexation, as part of its comprehensive plan adoption process under the state growth management act, chapter 36.70A RCW.

(g) "Threshold amount" means the maximum amount of tax distributions as determined by the city in accordance with subsection (7) of this section that the department must distribute to the city generated from the tax imposed under this section in a fiscal year. [2011 c 353 § 10; 2009 c 550 § 1; 2006 c 361 § 1.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Severability—2006 c 361: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 361 § 2.]

82.14.430 Sales and use tax for regional transportation investment district. (1) If approved by the majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may impose a sales and use tax of up to 0.1 percent of the selling price or value of the article used in the case of a use tax. The tax authorized by this section is in addition to the tax authorized by RCW 82.14.030 and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing district. Motor vehicles are exempt from the sales and use tax imposed under this subsection.

(2) If approved by the majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may impose a tax on the use of a motor vehicle within a regional transportation investment district. The tax applies to those persons who reside within the regional transportation investment district. The rate of the tax may not exceed 0.1 percent of the value of the motor vehicle. The tax authorized by this subsection is in addition to the tax authorized under RCW 82.14.030 and must be imposed and collected at the time a taxable event under RCW 82.08.020(1) or 82.12.020 takes place. All revenue received under this subsection must be deposited in the local sales and use tax account and distributed to the regional transportation investment district according to RCW 82.14.050. The following provisions apply to the use tax in this subsection:

(a) Where persons are taxable under chapter 82.08 RCW, the seller shall collect the use tax from the buyer using the collection provisions of RCW 82.08.050.

(b) Where persons are taxable under chapter 82.12 RCW, the use tax must be collected using the provisions of RCW 82.12.045.

(c) "Motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road vehicles as defined in RCW 46.04.365, nonhighway vehicles as defined in RCW 46.09.310, and snowmobiles as defined in RCW 46.04.546.

(d) "Person" has the meaning given in RCW 82.04.030.

(e) The value of a motor vehicle must be determined under RCW 82.12.010.

(f) Except as specifically stated in this subsection (2), chapters 82.12 and 82.32 RCW apply to the use tax. The use tax is a local tax imposed under the authority of chapter 82.14 RCW, and chapter 82.14 RCW applies fully to the use tax.

(3) In addition to fulfilling the notice requirements under RCW 82.14.055(1), and unless waived by the department, a regional transportation investment district shall provide the department of revenue with digital mapping and legal descriptions of areas in which the tax will be collected. [2011 c 171 § 123; 2006 c 311 § 17; 2002 c 56 § 405.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—2006 c 311: See note following RCW 36.120.020.

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

82.14.460 Sales and use tax for chemical dependency or mental health treatment services or therapeutic courts.

(1)(a) A county legislative authority may authorize, fix, and impose a sales and use tax in accordance with the terms of this chapter.

(b) If a county with a population over eight hundred thousand has not imposed the tax authorized under this subsection by January 1, 2011, any city with a population over thirty thousand located in that county may authorize, fix, and impose the sales and use tax in accordance with the terms of this chapter. The county must provide a credit against its tax for the full amount of tax imposed under this subsection (1)(b) by any city located in that county if the county imposes the tax after January 1, 2011.

(2) The tax authorized in this section is in addition to any other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county for a county's tax and within a city for a city's tax. The rate of tax equals one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(3) Moneys collected under this section must be used solely for the purpose of providing for the operation or delivery of chemical dependency or mental health treatment programs and services and for the operation or delivery of therapeutic court programs and services. For the purposes of this section, "programs and services" includes, but is not limited to, treatment services, case management, and housing that are a component of a coordinated chemical dependency or mental health treatment program or service.

(4) All moneys collected under this section must be used solely for the purpose of providing new or expanded programs and services as provided in this section, except as follows:

(a) For a county with a population larger than twenty-five thousand or a city with a population over thirty thousand, a portion of moneys collected under this section may be used to supplant existing funding for these purposes as follows: Up to fifty percent may be used to supplant existing funding in calendar years 2011-2012; up to forty percent may be used to supplant existing funding in calendar year 2013; up to thirty percent may be used to supplant existing funding in calendar year 2014; up to twenty percent may be used to supplant existing funding in calendar year 2015; and up to ten percent may be used to supplant existing funding in calendar year 2016;

(b) For a county with a population of less than twenty-five thousand, a portion of moneys collected under this section may be used to supplant existing funding for these purposes as follows: Up to eighty percent may be used to supplant existing funding in calendar years 2011-2012; up to sixty percent may be used to supplant existing funding in calendar year 2013; up to forty percent may be used to supplant existing funding in calendar year 2014; up to twenty percent may be used to supplant existing funding in calendar year 2015; and up to ten percent may be used to supplant existing funding in calendar year 2016; and

(c) Notwithstanding (a) and (b) of this subsection, moneys collected under this section may be used to support the cost of the judicial officer and support staff of a therapeutic court.

(5) Nothing in this section may be interpreted to prohibit the use of moneys collected under this section for the replacement of lapsed federal funding previously provided for the operation or delivery of services and programs as provided in this section. [2011 c 347 § 1; 2010 c 127 § 2; 2009 c 551 § 2; 2008 c 157 § 2; 2005 c 504 § 804.]

Findings—Intent—2008 c 157: "The legislature finds it necessary to clarify the original intent regarding eligible expenditures of the sales and use tax provided in RCW 82.14.460. The legislature intended that upon the original effective date of RCW 82.14.460, the moneys collected under RCW 82.14.460 would be permitted to be used for the purposes as provided in RCW 82.14.460 as clarified by section 2, chapter 157, Laws of 2008." [2008 c 157 § 1.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

82.14.465 Hospital benefit zones—Sales and use tax—Definitions. (1) A city, town, or county that creates a benefit zone and finances public improvements pursuant to chapter 39.100 RCW may impose a sales and use tax in accordance with the terms of this chapter and subject to the criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the city, town, or county. The rate of tax may not exceed the rate provided in RCW 82.08.020(1) in the case of a sales tax or a use tax, less the aggregate rates of any other taxes imposed on the same events that are credited against the state taxes imposed under chapters 82.08 and 82.12 RCW. The tax rate may be no higher than what is reasonably necessary for

the local government to receive its entire annual state contribution in a ten-month period of time.

(2) The tax imposed under subsection (1) of this section must be deducted from the amount of tax otherwise required to be collected or paid over to the department under chapter 82.08 or 82.12 RCW. The department must perform the collection of such taxes on behalf of the city, town, or county at no cost to the city, town, or county.

(3) No tax may be imposed under this section before July 1, 2007. Before imposing a tax under this section, the city, town, or county shall first have received tax allocation revenues during the preceding calendar year. The tax imposed under this section expires on the earlier of the date: (a) The tax allocation revenues are no longer used for public improvements and public improvement costs; (b) the bonds issued to finance or refinance the improvements are no longer outstanding, if the bonds are issued; or (c) that is thirty years after the tax is first imposed.

(4) An ordinance adopted by the legislative authority of a city, town, or county imposing a tax under this section must provide that:

(a) The tax is first imposed on the first day of a fiscal year;

(b) The amount of tax received by the local government in any fiscal year may not exceed the amount of the state contribution;

(c) The tax must cease to be distributed for the remainder of any fiscal year in which either:

(i) The amount of tax distributions totals the amount of the state contribution;

(ii) The amount of tax distributions totals the amount of local public sources, dedicated in the previous calendar year to finance public improvements authorized under chapter 39.100 RCW, expended in the previous year for public improvement costs, or used to pay for other bonds issued to pay for public improvements. Revenues from local public sources, including hospital sources identified in RCW 82.14.465(7)(k), dedicated in the preceding calendar year that are in excess of the project award may be carried forward and used in later years for the purpose of this subsection; or

(iii) The amount of revenue from taxes imposed under this section by all cities, towns, and counties totals the annual state credit limit as provided in RCW 82.32.700(3);

(d) The tax must be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(e) Any revenue generated by the tax in excess of the amounts specified in (b) and (c) of this subsection belong to the state of Washington.

(5) If both a county and a city or town impose a tax under this section, the tax imposed by the city, town, or county is credited as follows:

(a) If the county has created a benefit zone before the city or town, the tax imposed by the county is credited against the tax imposed by the city or town, the purpose of such credit is to give priority to the county tax; and

(b) If the city or town has created a benefit zone before the county, the tax imposed by the city or town is credited against the tax imposed by the county, the purpose of such credit is to give priority to the city or town tax.

(6) The department must determine the amount of tax distributions attributable to each city, town, and county imposing a sales and use tax under this section and must advise a city, town, or county when the tax will cease to be distributed for the remainder of the fiscal year as provided in subsection (4)(c) of this section. Determinations by the department of the amount of taxes attributable to a city, town, or county are final and may not be used to challenge the validity of any tax imposed under this section. The department must remit any tax revenues in excess of the amounts specified in subsection (4)(b) and (c) of this section to the state treasurer who must deposit the moneys in the general fund.

(7) The definitions in this subsection apply throughout this section and RCW 82.14.470 unless the context clearly requires otherwise.

(a) "Base year" means the calendar year immediately following the creation of a benefit zone.

(b) "Benefit zone" has the same meaning as provided in RCW 39.100.010.

(c) "Excess local excise taxes" has the same meaning as provided in RCW 39.100.050.

(d) "Excess state excise taxes" means the amount of excise taxes received by the state during the measurement year from taxable activity within the benefit zone over and above the amount of excise taxes received by the state during the base year from taxable activity within the benefit zone. However, if a local government creates the benefit zone and reasonably determines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred in the twelve months immediately preceding the creation of the benefit zone within the boundaries of the area that became the benefit zone, "excess state excise taxes" means the entire amount of state excise taxes the state receives during a calendar year period beginning with the calendar year immediately following the creation of the benefit zone and continuing with each measurement year thereafter.

(e) "State excise taxes" means revenues derived from state retail sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount of tax distributions from all local retail sales and use taxes imposed on the same taxable events that are credited against the state retail sales and use taxes under chapters 82.08 and 82.12 RCW except for the local tax authorized in this section.

(f) "Fiscal year" has the same meaning as provided in RCW 39.100.030.

(g) "Measurement year" means a calendar year, beginning with the calendar year following the base year and each calendar year thereafter, that is used annually to measure the amount of excess state excise taxes and excess local excise taxes.

(h) "State contribution" means the lesser of two million dollars or an amount equal to excess state excise taxes received by the state during the preceding calendar year.

(i) "Tax allocation revenues" has the same meaning as provided in RCW 39.100.010.

(j) "Public improvements" and "public improvement costs" have the same meanings as provided in RCW 39.100.010.

(k) "Local public sources" includes, but is not limited to, private monetary contributions, assessments, dedicated local

government funds, and tax allocation revenues. "Local public sources" does not include local government funds derived from the state-subsidized portion of any state loan or state grant, any local tax that is credited against the state sales and use taxes, or any other state funds. Local public sources may include amounts expended by a hospital in the zone since the date of formation of the zone and may be applied to the year or years designated by the local government. [2011 c 363 § 3; 2009 c 535 § 1109; 2007 c 266 § 7; 2006 c 111 § 7.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

Effective date—2006 c 111: See RCW 39.100.900.

82.14.470 Hospital benefit zones—Local public sources dedicated to finance public improvements—Reporting requirements. (1)(a)(i) Moneys collected from the taxes imposed under RCW 82.14.465 may be used only for the following purposes:

(A) Principal and interest payments on bonds issued to finance or refinance public improvements in a benefit zone under the authority of RCW 39.100.060;

(B) Principal and interest payments on other bonds issued by the local government to finance public improvements; or

(C) Payments for public improvement costs.

(ii) Moneys collected and used as provided in (a)(i) of this subsection must be matched with an amount from local public sources dedicated, as further provided in RCW 82.14.465 (4)(c)(ii) and (7)(k), through December 31st of the previous calendar year to finance public improvements authorized under chapter 39.100 RCW.

(b) Local public sources are dedicated to finance public improvements if they: (i) Are actually expended to pay public improvement costs or debt service on bonds issued for public improvements; or (ii) are required by law or an agreement to be used exclusively to pay public improvement costs or debt service on bonds issued for public improvements.

(c) A city, town, or county is not required to expend taxes imposed under RCW 82.14.465 in the fiscal year in which the taxes are received.

(2) A local government must inform the department by the first day of March of the amount of local public sources allocated to the preceding calendar year to finance public improvements authorized under chapter 39.100 RCW.

(3) If a local government fails to comply with subsection (2) of this section, no tax may be imposed under RCW 82.14.465 in the subsequent fiscal year.

(4)(a) A local government must provide a report to the department and the state auditor by March 1st of each year. A local government must make a good faith effort to provide information required for the report.

(b) The report must contain the following information:

(i) The amount of tax allocation revenues, taxes under RCW 82.14.465, and local public sources received by the local government during the preceding calendar year, and a summary of how these revenues were expended; and

(ii) The names of any businesses known to the local government that have located within the benefit zone as a result of the public improvements undertaken by the local govern-

ment and financed in whole or in part with hospital benefit zone financing.

(5) The department must make a report available to the public and the legislature by June 1st of each year. The report must include a list of public improvements undertaken by local governments and financed in whole or in part with hospital benefit zone financing, and it must also include a summary of the information provided to the department by local governments under subsection (4) of this section. [2011 c 363 § 4; 2007 c 266 § 8; 2006 c 111 § 8.]

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

Effective date—2006 c 111: See RCW 39.100.900.

82.14.500 Streamlined sales and use tax mitigation account—Funding—Determination of losses. (1)(a) In order to mitigate local sales tax revenue net losses as a result of the sourcing provisions of the streamlined sales and use tax agreement under this title, the state treasurer, on July 1, 2011, and each July 1st thereafter, must transfer into the streamlined sales and use tax mitigation account from the general fund the sum required to mitigate actual net losses as determined under this section.

(b) During the 2011-2013 fiscal biennium, the amount that would otherwise be transferred under (a) of this subsection must be reduced by 3.4 percent.

(2) Beginning July 1, 2008, and continuing until the department determines annual losses under subsection (3) of this section, the department must determine the amount of local sales tax net loss each local taxing jurisdiction experiences as a result of the sourcing provisions of the streamlined sales and use tax agreement under this title each calendar quarter. The department must determine losses by analyzing and comparing data from tax return information and tax collections for each local taxing jurisdiction before and after July 1, 2008, on a calendar quarter basis. The department's analysis may be revised and supplemented in consultation with the oversight committee as provided in subsection (4) of this section. To determine net losses, the department must reduce losses by the amount of voluntary compliance revenue for the calendar quarter analyzed. Beginning December 31, 2008, distributions must be made quarterly from the streamlined sales and use tax mitigation account by the state treasurer, as directed by the department, to each local taxing jurisdiction, other than public facilities districts for losses in respect to taxes imposed under the authority of RCW 82.14.390, in an amount representing its net losses for the previous calendar quarter. Distributions must be made on the last working day of each calendar quarter and must cease when distributions under subsection (3) of this section begin.

(3)(a) By December 31, 2009, or such later date the department in consultation with the oversight committee determines that sufficient data is available, the department must determine each local taxing jurisdiction's annual loss. The department must determine annual losses by comparing at least twelve months of data from tax return information and tax collections for each local taxing jurisdiction before and after July 1, 2008. The department is not required to determine annual losses on a recurring basis, but may make any adjustments to annual losses as it deems proper as a result of the annual reviews provided in (b) of this subsection.

Beginning the calendar quarter in which the department determines annual losses, and each calendar quarter thereafter, distributions must be made from the streamlined sales and use tax mitigation account by the state treasurer on the last working day of the calendar quarter, as directed by the department, to each local taxing jurisdiction, other than public facilities districts for losses in respect to taxes imposed under the authority of RCW 82.14.390, in an amount representing one-fourth of the jurisdiction's annual loss reduced by voluntary compliance revenue reported during the previous calendar quarter.

(b) The department's analysis of annual losses must be reviewed by December 1st of each year and may be revised and supplemented in consultation with the oversight committee as provided in subsection (4) of this section.

(4) The department must convene an oversight committee to assist in the determination of losses. The committee includes one representative of one city whose revenues are increased, one representative of one city whose revenues are reduced, one representative of one county whose revenues are increased, one representative of one county whose revenues are decreased, one representative of one transportation authority under RCW 82.14.045 whose revenues are increased, and one representative of one transportation authority under RCW 82.14.045 whose revenues are reduced, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020. Beginning July 1, 2008, the oversight committee must meet quarterly with the department to review and provide additional input and direction on the department's analyses of losses. Local taxing jurisdictions may also present to the oversight committee additional information to improve the department's analyses of the jurisdiction's loss. Beginning January 1, 2010, the oversight committee must meet at least annually with the department by December 1st.

(5) The rule-making provisions of chapter 34.05 RCW do not apply to this section. [2011 1st sp.s. c 50 § 974; 2007 c 6 § 903.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Chapter 82.16 RCW PUBLIC UTILITY TAX

Sections

82.16.020	Public utility tax imposed—Additional tax imposed—Deposit of moneys. (<i>Effective until June 30, 2013.</i>)
82.16.020	Public utility tax imposed—Additional tax imposed—Deposit of moneys. (<i>Effective June 30, 2013.</i>)
82.16.110	Renewable energy system cost recovery—Definitions.
82.16.120	Renewable energy system cost recovery—Application to light/power business—Certification—Limitations.
82.16.140	Repealed.
82.16.305	Exemptions—Joint municipal utility services authorities.

82.16.020 Public utility tax imposed—Additional tax imposed—Deposit of moneys. (*Effective until June 30, 2013.*) (1) There is levied and there shall be collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein men-

tioned. The tax shall be equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

- (a) Express, sewerage collection, and telegraph businesses: Three and six-tenths percent;
- (b) Light and power business: Three and sixty-two one-hundredths percent;
- (c) Gas distribution business: Three and six-tenths percent;
- (d) Urban transportation business: Six-tenths of one percent;
- (e) Vessels under sixty-five feet in length, except tugboats, operating upon the waters within the state: Six-tenths of one percent;
- (f) Motor transportation, railroad, railroad car, and tugboat businesses, and all public service businesses other than ones mentioned above: One and eight-tenths of one percent;
- (g) Water distribution business: Four and seven-tenths percent;
- (h) Log transportation business: One and twenty-eight one-hundredths percent.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section.

(3) Twenty percent of the moneys collected under subsection (1) of this section on water distribution businesses and sixty percent of the moneys collected under subsection (1) of this section on sewerage collection businesses shall be deposited in the public works assistance account created in RCW 43.155.050: PROVIDED, That during the fiscal year 2011, twenty percent of the moneys collected under subsection (1) of this section on water distribution businesses and sixty percent of the moneys collected under subsection (1) of this section on sewerage collection businesses must be deposited in the general fund for general purpose expenditures. [2011 1st sp.s. c 48 § 7032; 2009 c 469 § 702; 1996 c 150 § 2; 1989 c 302 § 204; 1986 c 282 § 14; 1985 c 471 § 10; 1983 2nd ex.s. c 3 § 13; 1982 2nd ex.s. c 5 § 1; 1982 1st ex.s. c 35 § 5; 1971 ex.s. c 299 § 12; 1967 ex.s. c 149 § 24; 1965 ex.s. c 173 § 21; 1961 c 293 § 13; 1961 c 15 § 82.16.020. Prior: 1959 ex.s. c 3 § 16; 1939 c 225 § 19; 1935 c 180 § 36; RRS § 8370-36.]

Reviser's note: The amendatory language added to this section by 2011 1st sp.s. c 48 § 7032 was inadvertently not expired. The same language was added to the version of this section that takes effect June 30, 2013.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2009 c 469: See note following RCW 82.08.962.

Expiration date—2009 c 469 §§ 701 and 702: See note following RCW 82.16.010.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Additional notes found at www.leg.wa.gov

82.16.020 Public utility tax imposed—Additional tax imposed—Deposit of moneys. (Effective June 30, 2013.)

(1) There is levied and there shall be collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. The tax shall be equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

- (a) Express, sewerage collection, and telegraph businesses: Three and six-tenths percent;
- (b) Light and power business: Three and sixty-two one-hundredths percent;
- (c) Gas distribution business: Three and six-tenths percent;
- (d) Urban transportation business: Six-tenths of one percent;
- (e) Vessels under sixty-five feet in length, except tugboats, operating upon the waters within the state: Six-tenths of one percent;
- (f) Motor transportation, railroad, railroad car, and tugboat businesses, and all public service businesses other than ones mentioned above: One and eight-tenths of one percent;
- (g) Water distribution business: Four and seven-tenths percent.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section.

(3) Twenty percent of the moneys collected under subsection (1) of this section on water distribution businesses and sixty percent of the moneys collected under subsection (1) of this section on sewerage collection businesses shall be deposited in the public works assistance account created in RCW 43.155.050: PROVIDED, That during the fiscal year 2011, twenty percent of the moneys collected under subsection (1) of this section on water distribution businesses and sixty percent of the moneys collected under subsection (1) of this section on sewerage collection businesses must be deposited in the general fund for general purpose expenditures. [2011 1st sp.s. c 48 § 7033; 1996 c 150 § 2; 1989 c 302 § 204; 1986 c 282 § 14; 1985 c 471 § 10; 1983 2nd ex.s. c 3 § 13; 1982 2nd ex.s. c 5 § 1; 1982 1st ex.s. c 35 § 5; 1971 ex.s. c 299 § 12; 1967 ex.s. c 149 § 24; 1965 ex.s. c 173 § 21; 1961 c 293 § 13; 1961 c 15 § 82.16.020. Prior: 1959 ex.s. c 3 § 16; 1939 c 225 § 19; 1935 c 180 § 36; RRS § 8370-36.]

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Additional notes found at www.leg.wa.gov

82.16.110 Renewable energy system cost recovery—Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrator" means an owner and assignee of a community solar project as defined in subsection (2)(a)(i) of this section that is responsible for applying for the investment cost recovery incentive on behalf of the other owners and performing such administrative tasks on behalf of the other owners as may be necessary, such as receiving investment cost recovery incentive payments, and allocating and paying appropriate amounts of such payments to the other owners.

(2)(a) "Community solar project" means:

(i) A solar energy system that is capable of generating up to seventy-five kilowatts of electricity and is owned by local individuals, households, nonprofit organizations, or nonutility businesses that is placed on the property owned by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business;

(ii) A utility-owned solar energy system that is capable of generating up to seventy-five kilowatts of electricity and

that is voluntarily funded by the utility's ratepayers where, in exchange for their financial support, the utility gives contributors a payment or credit on their utility bill for the value of the electricity produced by the project; or

(iii) A solar energy system, placed on the property owned by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business, that is capable of generating up to seventy-five kilowatts of electricity, and that is owned by a company whose members are each eligible for an investment cost recovery incentive for the same customer-generated electricity as provided in RCW 82.16.120.

(b) For the purposes of "community solar project" as defined in (a) of this subsection:

(i) "Company" means an entity that is:

(A)(I) A limited liability company;

(II) A cooperative formed under chapter 23.86 RCW; or

(III) A mutual corporation or association formed under chapter 24.06 RCW; and

(B) Not a "utility" as defined in this subsection (2)(b); and

(ii) "Nonprofit organization" means an organization exempt from taxation under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended, as of January 1, 2009; and

(iii) "Utility" means a light and power business, an electric cooperative, or a mutual corporation that provides electricity service.

(3) "Customer-generated electricity" means a community solar project or the alternating current electricity that is generated from a renewable energy system located in Washington and installed on an individual's, businesses', or local government's real property that is also provided electricity generated by a light and power business. Except for community solar projects, a system located on a leasehold interest does not qualify under this definition. Except for utility-owned community solar projects, "customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

(4) "Economic development kilowatt-hour" means the actual kilowatt-hour measurement of customer-generated electricity multiplied by the appropriate economic development factor.

(5) "Local governmental entity" means any unit of local government of this state including, but not limited to, counties, cities, towns, municipal corporations, quasi-municipal corporations, special purpose districts, and school districts.

(6) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(7) "Renewable energy system" means a solar energy system, an anaerobic digester as defined in RCW 82.08.900, or a wind generator used for producing electricity.

(8) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(9) "Solar inverter" means the device used to convert direct current to alternating current in a solar energy system.

(10) "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected

photovoltaic cells and providing a single direct current electrical output.

(11) "Stirling converter" means a device that produces electricity by converting heat from a solar source utilizing a stirling engine. [2011 c 179 § 2. Prior: 2010 c 202 § 1; 2010 c 106 § 225; 2009 c 469 § 504; 2005 c 300 § 2.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Effective date—2009 c 469: See note following RCW 82.08.962.

Findings—Intent—2005 c 300: "The legislature finds that the use of renewable energy resources generated from local sources such as solar and wind power benefit our state by reducing the load on the state's electric energy grid, by providing nonpolluting sources of electricity generation, and by the creation of jobs for local industries that develop and sell renewable energy products and technologies.

The legislature finds that Washington state has become a national and international leader in the technologies related to the solar electric markets. The state can support these industries by providing incentives for the purchase of locally made renewable energy products. Locally made renewable technologies benefit and protect the state's environment. The legislature also finds that the state's economy can be enhanced through the creation of incentives to develop additional renewable energy industries in the state.

The legislature intends to provide incentives for the greater use of locally created renewable energy technologies, support and retain existing local industries, and create new opportunities for renewable energy industries to develop in Washington state." [2005 c 300 § 1.]

Effective date—2005 c 300: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 300 § 8.]

82.16.120 Renewable energy system cost recovery—Application to light/power business—Certification—

Limitations. (1)(a) Any individual, business, local governmental entity, not in the light and power business or in the gas distribution business, or a participant in a community solar project may apply to the light and power business serving the situs of the system, each fiscal year beginning on July 1, 2005, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system.

(b) In the case of a community solar project as defined in RCW 82.16.110(2)(a)(i), the administrator must apply for the investment cost recovery incentive on behalf of each of the other owners.

(c) In the case of a community solar project as defined in RCW 82.16.110(2)(a)(iii), the company owning the community solar project must apply for the investment cost recovery incentive on behalf of each member of the company.

(2)(a) Before submitting for the first time the application for the incentive allowed under subsection (4) of this section, the applicant must submit to the department of revenue and to the climate and rural energy development center at the Washington State University, established under RCW 28B.30.642, a certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system.

(A) If the applicant is an administrator of a community solar project as defined in RCW 82.16.110(2)(a)(i), the certification must also include the name and address of each of the owners of the community solar project.

(B) If the applicant is a company that owns a community solar project as defined in RCW 82.16.110(2)(a)(iii), the cer-

tification must also include the name and address of each member of the company;

(ii) The applicant's tax registration number;

(iii) That the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) Any solar inverters and solar modules manufactured in Washington state;

(B) A wind generator powered by blades manufactured in Washington state;

(C) A solar inverter manufactured in Washington state;

(D) A solar module manufactured in Washington state;

(E) A stirling converter manufactured in Washington state; or

(F) Solar or wind equipment manufactured outside of Washington state;

(iv) That the electricity can be transformed or transmitted for entry into or operation in parallel with electricity transmission and distribution systems; and

(v) The date that the renewable energy system received its final electrical permit from the applicable local jurisdiction.

(b) Within thirty days of receipt of the certification the department of revenue must notify the applicant by mail, or electronically as provided in RCW 82.32.135, whether the renewable energy system qualifies for an incentive under this section. The department may consult with the climate and rural energy development center to determine eligibility for the incentive. System certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(1).

(3)(a) By August 1st of each year application for the incentive must be made to the light and power business serving the situs of the system by certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system.

(A) If the applicant is an administrator of a community solar project as defined in RCW 82.16.110(2)(a)(i), the application must also include the name and address of each of the owners of the community solar project.

(B) If the applicant is a company that owns a community solar project as defined in RCW 82.16.110(2)(a)(iii), the application must also include the name and address of each member of the company;

(ii) The applicant's tax registration number;

(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section; and

(iv) A statement of the amount of kilowatt-hours generated by the renewable energy system in the prior fiscal year.

(b) Within sixty days of receipt of the incentive certification the light and power business serving the situs of the system must notify the applicant in writing whether the incentive payment will be authorized or denied. The business may consult with the climate and rural energy development center to determine eligibility for the incentive payment. Incentive certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(1).

(c)(i) Persons, administrators of community solar projects, and companies receiving incentive payments must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received. Such records must be open for examination at any time upon notice by the light and power business that made the payment or by the department. If upon examination of any records or from other information obtained by the business or department it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the business may assess against the person for the amount found to have been paid in excess of the correct amount of incentive payable and must add thereto interest on the amount. Interest is assessed in the manner that the department assesses interest upon delinquent tax under RCW 82.32.050.

(ii) If it appears that the amount of incentive paid is less than the correct amount of incentive payable the business may authorize additional payment.

(4) Except for community solar projects, the investment cost recovery incentive may be paid fifteen cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For community solar projects, the investment cost recovery incentive may be paid thirty cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For the purposes of this section, the rate paid for the investment cost recovery incentive may be multiplied by the following factors:

(a) For customer-generated electricity produced using solar modules manufactured in Washington state or a solar stirling converter manufactured in Washington state, two and four-tenths;

(b) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(c) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment or using a wind generator equipped with blades manufactured in Washington state, one; and

(d) For all other customer-generated electricity produced by wind, eight-tenths.

(5)(a) No individual, household, business, or local governmental entity is eligible for incentives provided under subsection (4) of this section for more than five thousand dollars per year.

(b) Except as provided in (c) through (e) of this subsection (5), each applicant in a community solar project is eligible for up to five thousand dollars per year.

(c) Where the applicant is an administrator of a community solar project as defined in RCW 82.16.110(2)(a)(i), each owner is eligible for an incentive but only in proportion to the ownership share of the project, up to five thousand dollars per year.

(d) Where the applicant is a company owning a community solar project that has applied for an investment cost recovery incentive on behalf of its members, each member of the company is eligible for an incentive that would otherwise belong to the company but only in proportion to each ownership share of the company, up to five thousand dollars per

year. The company itself is not eligible for incentives under this section.

(e) In the case of a utility-owned community solar project, each ratepayer that contributes to the project is eligible for an incentive in proportion to the contribution, up to five thousand dollars per year.

(6) If requests for the investment cost recovery incentive exceed the amount of funds available for credit to the participating light and power business, the incentive payments must be reduced proportionately.

(7) The climate and rural energy development center at Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

(8) The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the investment cost recovery incentive.

(9) No incentive may be paid under this section for kilowatt-hours generated before July 1, 2005, or after June 30, 2020. [2011 c 179 § 3. Prior: 2010 c 202 § 2; 2010 c 106 § 103; 2009 c 469 § 505; 2007 c 111 § 101; 2005 c 300 § 3.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Effective date—2009 c 469: See note following RCW 82.08.962.

Part headings not law—2007 c 111: "Part headings used in this act are not any part of the law." [2007 c 111 § 401.]

Findings—Intent—Effective date—2005 c 300: See notes following RCW 82.16.110.

82.16.140 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.16.305 Exemptions—Joint municipal utility services authorities. This chapter does not apply to any payments between, or any transfer of assets to or from, a joint municipal utility services authority created under chapter 39.106 RCW and any of its members. [2011 c 258 § 14.]

Short title—Purpose—Intent—2011 c 258: See RCW 39.106.010.

Chapter 82.18 RCW

SOLID WASTE COLLECTION TAX

Sections

82.18.040 Collection of tax—Payment to state.

82.18.040 Collection of tax—Payment to state. Taxes collected under this chapter shall be held in trust until paid to the state. Taxes received by the state shall be deposited in the public works assistance account created in RCW 43.155.050: PROVIDED, That during the fiscal year 2011, taxes received by the state under this chapter must be deposited in the general fund for general purpose expenditures. Any person collecting the tax who appropriates or converts the tax collected shall be guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. If a taxpayer fails to pay the tax imposed by this chapter to the person charged with collection of the tax and the person charged with collection fails to pay the tax to the

[2011 RCW Supp—page 1622]

department, the department may, in its discretion, proceed directly against the taxpayer for collection of the tax.

The tax shall be due from the taxpayer within twenty-five days from the date the taxpayer is billed by the person collecting the tax.

The tax shall be due from the person collecting the tax at the end of the tax period in which the tax is received from the taxpayer. If the taxpayer remits only a portion of the total amount billed for taxes, consideration, and related charges, the amount remitted shall be applied first to payment of the solid waste collection tax and this tax shall have priority over all other claims to the amount remitted. [2011 1st sp.s. c 48 § 7034; 2000 c 103 § 11; 1989 c 431 § 85; 1986 c 282 § 9.]

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Chapter 82.24 RCW TAX ON CIGARETTES

Sections

82.24.026 Additional tax imposed—Where deposited.

82.24.026 Additional tax imposed—Where deposited. In addition to the tax imposed upon the sale, use, consumption, handling, possession, or distribution of cigarettes set forth in RCW 82.24.020, there is imposed a tax in an amount equal to three cents per cigarette.

Beginning July 1, 2010, the revenue collected under this section must be deposited into the general fund. [2011 c 334 § 1; 2010 1st sp.s. c 22 § 3; 2009 c 479 § 67; 2008 c 86 § 302; 2005 c 514 § 1102.]

Effective date—2011 c 334: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2011]." [2011 c 334 § 2.]

Intent—Effective date—2010 1st sp.s. c 22: See notes following RCW 82.24.020.

Effective date—2009 c 479: See note following RCW 2.56.030.

Severability—Savings—Part headings not law—2008 c 86: See notes following RCW 82.14.030.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Chapter 82.32 RCW

GENERAL ADMINISTRATIVE PROVISIONS

Sections

82.32.030 Registration certificates—Threshold levels—Central registration system.

82.32.080 Payment by check—Electronic funds transfer—Rules—Mailing returns or remittances—Time extension—Deposits—Time extension during state of emergency—Records—Payment must accompany return.

82.32.080 Payment by check—Electronic funds transfer—Rules—Mailing returns or remittances—Time extension—Deposits—Time extension during state of emergency—Records—Payment must accompany return (*as amended by 2011 c 24*).

82.32.085 Electronic funds transfer—Generally.

82.32.090 Late payment—Disregard of written instructions—Evasion—Penalties.

82.32.115 Repealed.

82.32.117 Application for court approval of subpoena prior to issuance—No notice required.

82.32.210	Tax warrant—Filing—Lien—Effect. (<i>Effective January 1, 2012.</i>)
82.32.212	Tax warrant—Notice of lien. (<i>Effective January 1, 2012.</i>)
82.32.330	Disclosure of return or tax information.
82.32.570	Repealed.
82.32.585	Annual survey requirement for tax preferences.
82.32.590	Annual surveys or reports for tax incentives—Failure to file.
82.32.800	Contributions of high technology research and development tax credit—Opportunity expansion account.

82.32.030 Registration certificates—Threshold levels—Central registration system. (1) Except as provided in subsections (2) and (3) of this section, if any person engages in any business or performs any act upon which a tax is imposed by the preceding chapters, he or she must, under such rules as the department prescribes, apply for and obtain from the department a registration certificate. Such registration certificate is personal and nontransferable and is valid as long as the taxpayer continues in business and pays the tax accrued to the state. In case business is transacted at two or more separate places by one taxpayer, a separate registration certificate for each place at which business is transacted with the public is required. Each certificate must be numbered and must show the name, residence, and place and character of business of the taxpayer and such other information as the department of revenue deems necessary and must be posted in a conspicuous place at the place of business for which it is issued. Where a place of business of the taxpayer is changed, the taxpayer must return to the department the existing certificate, and a new certificate will be issued for the new place of business. No person required to be registered under this section may engage in any business taxable hereunder without first being so registered. The department, by rule, may provide for the issuance of certificates of registration to temporary places of business.

(2) Unless the person is a dealer as defined in RCW 9.41.010, registration under this section is not required if the following conditions are met:

(a) A person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than twelve thousand dollars per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twelve thousand dollars per year;

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect; and

(d) The person is not otherwise required to obtain a license subject to the master application procedure provided in chapter 19.02 RCW.

(3) All persons who agree to collect and remit sales and use tax to the department under the agreement must register through the central registration system authorized under the agreement. Persons required to register under subsection (1) of this section are not relieved of that requirement because of registration under this subsection (3).

(4) Persons registered under subsection (3) of this section who are not required to register under subsection (1) of this section and who are not otherwise subject to the requirements of chapter 19.02 RCW are not subject to the fees imposed by the department under the authority of RCW 19.02.075. [2011 c 298 § 38; 2007 c 6 § 202; 1996 c 111 § 2.

Prior: 1994 sp.s. c 7 § 446; 1994 sp.s. c 2 § 2; 1992 c 206 § 8; 1982 1st ex.s. c 4 § 1; 1979 ex.s. c 95 § 1; 1975 1st ex.s. c 278 § 77; 1961 c 15 § 82.32.030; prior: 1941 c 178 § 19, part; 1937 c 227 § 16, part; 1935 c 180 § 187, part; Rem. Supp. 1941 § 8370-187, part.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Findings—Purpose—1996 c 111: "The legislature finds that small businesses play a vital role in the state's current and future economic health. The legislature also finds that the state's excise tax reporting and registration requirements are unduly burdensome for small businesses incurring little or no tax liability. The legislature recognizes the costs associated in complying with the reporting and registration requirements that are hindering the further development of those businesses. For these reasons the legislature with this act simplifies the tax reporting and registration requirements for certain small businesses." [1996 c 111 § 1.]

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

Additional notes found at www.leg.wa.gov

82.32.080 Payment by check—Electronic funds transfer—Rules—Mailing returns or remittances—Time extension—Deposits—Time extension during state of emergency—Records—Payment must accompany return. (1) When authorized by the department, payment of the tax may be made by uncertified check under such rules as the department prescribes, but, if a check so received is not paid by the bank on which it is drawn, the taxpayer, by whom such check is tendered, will remain liable for payment of the tax and for all legal penalties and interest, the same as if such check had not been tendered.

(2)(a) Except as otherwise provided in this subsection, payment of the tax must be made by electronic funds transfer, as defined in RCW 82.32.085, if the taxpayer is required to file and remit its taxes on a monthly basis. As an alternative to electronic funds transfer, the department may authorize other forms of electronic payment, such as credit card and e-check. All taxes administered by this chapter are subject to this requirement except the taxes authorized by chapters 82.14A, 82.14B, 82.24, 82.29A, and 84.33 RCW. It is the intent of this subsection to require electronic payment for those taxes reported on the department's combined excise tax return or any successor return. The mandatory electronic payment requirement in this subsection also applies to taxpayers who: (i) Are subject to the tax imposed in RCW 82.04.257 but for whom the department has authorized a tax reporting frequency that is less frequent than monthly; or (ii) meet the threshold for filing and remitting taxes on a monthly basis as established by rule of the department but for whom the department has authorized a less frequent reporting frequency, when such authorization became effective on or after July 26, 2009.

(b) The department, for good cause, may waive the electronic payment requirement in this subsection for any taxpayer. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(c) The department is authorized to accept payment of taxes by electronic funds transfer or other acceptable forms of electronic payment from taxpayers that are not subject to the mandatory electronic payment requirements in this subsection.

(3)(a) Except as otherwise provided in this subsection, returns must be filed electronically using the department's online tax filing service, if the taxpayer is required to file and remit its taxes on a monthly basis. The mandatory electronic filing requirement in this subsection also applies to taxpayers who: (i) Are subject to the tax imposed in RCW 82.04.257 but for whom the department has authorized a tax reporting frequency that is less frequent than monthly; or (ii) meet the threshold for filing and remitting taxes on a monthly basis as established by rule of the department but for whom the department has authorized a less frequent reporting frequency, when such authorization became effective on or after July 26, 2009.

(b) The department, for good cause, may waive the electronic filing requirement in this subsection for any taxpayer. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(c) The department is authorized to allow electronic filing of returns from taxpayers that are not subject to the mandatory electronic filing requirements in this subsection.

(4)(a)(i) The department, for good cause shown, may extend the time for making and filing any return, and may grant such reasonable additional time within which to make and file returns as it may deem proper, but any permanent extension granting the taxpayer a reporting date without penalty more than ten days beyond the due date, and any extension in excess of thirty days must be conditional on deposit with the department of an amount to be determined by the department which is approximately equal to the estimated tax liability for the reporting period or periods for which the extension is granted. In the case of a permanent extension or a temporary extension of more than thirty days the deposit must be deposited within the state treasury with other tax funds and a credit recorded to the taxpayer's account which may be applied to taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where an extension of more than thirty days has been granted.

(ii) The department must review the requirement for deposit at least annually and may require a change in the amount of the deposit required when it believes that such amount does not approximate the tax liability for the reporting period or periods for which the extension is granted.

(b) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for making or filing any return as the department deems proper. The department may not require any deposit as a condition for granting an extension under this subsection (4)(b).

(5) The department must keep full and accurate records of all funds received and disbursed by it. Subject to the provisions of RCW 82.32.105, 82.32.052, and 82.32.350, the department must apply the payment of the taxpayer first against penalties and interest, and then upon the tax, without regard to any direction of the taxpayer.

(6) The department may refuse to accept any return that is not accompanied by a remittance of the tax shown to be due thereon or that is not filed electronically as required in this section. When such return is not accepted, the taxpayer is deemed to have failed or refused to file a return and is subject to the procedures provided in RCW 82.32.100 and to the penalties provided in RCW 82.32.090. The above authority to refuse to accept a return may not apply when a return is timely filed electronically and a timely payment has been made by electronic funds transfer or other form of electronic payment as authorized by the department.

(7) Except for returns and remittances required to be transmitted to the department electronically under this section and except as otherwise provided in this chapter, a return or remittance that is transmitted to the department by United States mail is deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it. A return or remittance that is transmitted to the department electronically is deemed filed or received according to procedures set forth by the department.

(8)(a) For purposes of subsections (2) and (3) of this section, "good cause" means the inability of a taxpayer to comply with the requirements of subsection (2) or (3) of this section because:

(i) The taxpayer does not have the equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section;

(ii) The equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section is not functioning properly;

(iii) The taxpayer does not have access to the internet using the taxpayer's own equipment;

(iv) The taxpayer does not have a bank account or a credit card;

(v) The taxpayer's bank is unable to send or receive electronic funds transfer transactions; or

(vi) Some other circumstance or condition exists that, in the department's judgment, prevents the taxpayer from complying with the requirements of subsection (2) or (3) of this section.

(b) "Good cause" also includes any circumstance that, in the department's judgment, supports the efficient or effective administration of the tax laws of this state, including providing relief from the requirements of subsection (2) or (3) of this section to any taxpayer that is voluntarily collecting and remitting this state's sales or use taxes on sales to Washington customers but has no legal requirement to be registered with the department. [2010 2nd sp.s. c 2 § 2. Prior: 2010 c 111 § 304; 2010 c 106 § 226; 2009 c 176 § 2; 2008 c 181 § 502; 1999 c 357 § 3; 1997 c 156 § 3; 1990 c 69 § 2; 1971 ex.s. c 299 § 18; 1965 ex.s. c 141 § 2; 1963 ex.s. c 28 § 6; 1961 c 15 § 82.32.080; prior: 1951 1st ex.s. c 9 § 8; 1949 c 228 § 22; 1935 c 180 § 191; Rem. Supp. 1949 § 8370-191.]

Effective date—2010 2nd sp.s. c 2: See note following RCW 82.32.052.

82.32.080 Payment by check—Electronic funds transfer—Rules—Mailing returns or remittances—Time extension—Deposits—Time extension during state of emergency—Records—Payment must accompany return (as amended by 2011 c 24). (1) When authorized by the department, payment of the tax may be made by uncertified check under such rules as the department prescribes, but, if a check so received is not paid by the bank on which it is drawn, the taxpayer, by whom such check is tendered, will remain liable for payment of the tax and for all legal penalties, the same as if such check had not been tendered.

(2)(a) Except as otherwise provided in this subsection, payment of the tax must be made by electronic funds transfer, as defined in RCW 82.32.085(, if the taxpayer is required to file and remit its taxes on a monthly basis). As an alternative to electronic funds transfer, the department may authorize other forms of electronic payment, such as payment by credit card (and e-check). All taxes administered by this chapter are subject to this requirement, except ((the taxes authorized by chapters 82.14A, 82.14B, 82.24, 82.29A, and 84.33 RCW. It is the intent of this subsection to require electronic payment for those taxes reported on the department's combined excise tax return or any successor return. The mandatory electronic payment requirement in this subsection also applies to taxpayers who: (i) Are subject to the tax imposed in RCW 82.04.257 but for whom the department has authorized a tax reporting frequency that is less frequent than monthly; or (ii) meet the threshold for filing and remitting taxes on a monthly basis as established by rule of the department but for whom the department has authorized a less frequent reporting frequency, when such authorization became effective on or after July 26, 2009)) that the department may exclude any taxes not reported on the combined excise tax return or any successor return from the electronic payment requirement in this subsection.

(b) The department((, for good cause,)) may waive the electronic payment requirement in this subsection for any taxpayer or class of taxpayers, for good cause or for whom the department has assigned a reporting frequency that is less than quarterly. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(c) The department is authorized to accept payment of taxes by electronic funds transfer or other acceptable forms of electronic payment from taxpayers that are not subject to the mandatory electronic payment requirements in this subsection.

(3)(a) Except as otherwise provided in this subsection, returns must be filed electronically using the department's online tax filing service(, if the taxpayer is required to file and remit its taxes on a monthly basis. The mandatory electronic filing requirement in this subsection also applies to taxpayers who: (i) Are subject to the tax imposed in RCW 82.04.257 but for whom the department has authorized a tax reporting frequency that is less frequent than monthly; or (ii) meet the threshold for filing and remitting taxes on a monthly basis as established by rule of the department but for whom the department has authorized a less frequent reporting frequency, when such authorization became effective on or after July 26, 2009)) or other method of electronic reporting as the department may authorize.

(b) The department((, for good cause,)) may waive the electronic filing requirement in this subsection for any taxpayer or class of taxpayers, for good cause or for whom the department has assigned a reporting frequency that is less than quarterly. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(c) The department is authorized to allow electronic filing of returns from taxpayers that are not subject to the mandatory electronic filing requirements in this subsection.

(4)(a)(i) The department, for good cause shown, may extend the time for making and filing any return, and may grant such reasonable additional time within which to make and file returns as it may deem proper, but any permanent extension granting the taxpayer a reporting date without penalty more than ten days beyond the due date, and any extension in excess of thirty days must be conditional on deposit with the department of an amount to be determined by the department which is approximately equal to the estimated tax liability for the reporting period or periods for which the extension is granted. In the case of a permanent extension or a temporary extension of more than thirty days the deposit must be deposited within the state treasury with other tax funds and a credit recorded to the taxpayer's account which may be applied to taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where an extension of more than thirty days has been granted.

(ii) The department must review the requirement for deposit at least annually and may require a change in the amount of the deposit required when it believes that such amount does not approximate the tax liability for the reporting period or periods for which the extension is granted.

(b) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for making or filing any return as the department deems proper. The department may not require any deposit as a condition for granting an extension under this subsection (4)(b).

(5) The department must keep full and accurate records of all funds received and disbursed by it. Subject to the provisions of RCW 82.32.105 and 82.32.350, the department must apply the payment of the taxpayer first against penalties and interest, and then upon the tax, without regard to any direction of the taxpayer.

(6) The department may refuse to accept any return that is not accompanied by a remittance of the tax shown to be due thereon or that is not filed electronically as required in this section. When such return is not accepted, the taxpayer is deemed to have failed or refused to file a return and is subject to the procedures provided in RCW 82.32.100 and to the penalties provided in RCW 82.32.090. The above authority to refuse to accept a return may not apply when a return is timely filed electronically and a timely payment has been made by electronic funds transfer or other form of electronic payment as authorized by the department.

(7) Except for returns and remittances required to be transmitted to the department electronically under this section and except as otherwise provided in this chapter, a return or remittance that is transmitted to the department by United States mail is deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it. A return or remittance that is transmitted to the department electronically is deemed filed or received according to procedures set forth by the department.

(8)(a) For purposes of subsections (2) and (3) of this section, "good cause" means the inability of a taxpayer to comply with the requirements of subsection (2) or (3) of this section because:

(i) The taxpayer does not have the equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section;

(ii) The equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section is not functioning properly;

(iii) The taxpayer does not have access to the internet using the taxpayer's own equipment;

(iv) The taxpayer does not have a bank account or a credit card;

(v) The taxpayer's bank is unable to send or receive electronic funds transfer transactions; or

(vi) Some other circumstance or condition exists that, in the department's judgment, prevents the taxpayer from complying with the requirements of subsection (2) or (3) of this section.

(b) "Good cause" also includes any circumstance that, in the department's judgment, supports the efficient or effective administration of the tax laws of this state, including providing relief from the requirements of subsection (2) or (3) of this section to any taxpayer that is voluntarily collecting and remitting this state's sales or use taxes on sales to Washington customers but has no legal requirement to be registered with the department. [2011 c 24 § 1. Prior: 2010 c 111 § 304; 2010 c 106 § 226; 2009 c 176 § 2; 2008 c 181 § 502; 1999 c 357 § 3; 1997 c 156 § 3; 1990 c 69 § 2; 1971 ex.s. c 299 § 18; 1965 ex.s. c 141 § 2; 1963 ex.s. c 28 § 6; 1961 c 15 § 82.32.080; prior: 1951 1st ex.s. c 9 § 8; 1949 c 228 § 22; 1935 c 180 § 191; Rem. Supp. 1949 § 8370-191.]

Reviser's note: RCW 82.32.080 was amended by 2011 c 24 § 1 (EHB 1357) without cognizance of the amendments made by 2010 2nd sp.s. c 2 § 2 (SSB 6892). Although the language in both session laws is nonconflicting, the session laws are displayed separately because the amendments were made by different legislatures. See RCW 1.12.025.

Application—2011 c 24: "This act applies only to tax returns and payments originally due after July 22, 2011, including tax returns and payments for tax liabilities incurred before July 22, 2011, and originally due after July 22, 2011." [2011 c 24 § 4.]

Purpose—Retroactive application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Effective date—2010 c 106: See note following RCW 35.102.145.

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Intent—Effective date—1999 c 357: See notes following RCW 82.32.045.

Findings—Payment of excise taxes by electronic funds transfer—2006 c 256: See note following RCW 82.32.045.

Tax returns, remittances, etc., filing and receipt when transmitted by mail: RCW 1.12.070.

Additional notes found at www.leg.wa.gov

82.32.085 Electronic funds transfer—Generally. (1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit a checking or other deposit account. "Electronic funds transfer" includes payments made by electronic check (e-check).

(2)(a) An electronic funds transfer using the automated clearinghouse credit method must be completed so that the state receives collectible funds on or before the next banking day following the due date.

(b) A remittance made using the automated clearinghouse debit method or any other method of electronic payment authorized by the department will be deemed to be received on the due date if the electronic funds transfer or other electronic payment is initiated on or before 11:59 p.m. pacific time on the due date with an effective payment date on or before the next banking day following the due date.

(3) The department must adopt rules necessary to implement the provisions of RCW 82.32.080 and this section. The rules must include but are not limited to: (a) Coordinating the filing of tax returns with payment by electronic funds transfer or other form of electronic payment as authorized by the department; (b) form and content of electronic funds transfer; (c) voluntary use of electronic funds transfer with permission of the department for those taxpayers that are not subject to the mandatory electronic payment requirement in RCW 82.32.080; (d) use of commonly accepted means of electronic funds transfer; (e) means of crediting and recording proof of payment; and (f) means of correcting errors in transmission. [2011 c 24 § 2; 2009 c 176 § 3; 2006 c 256 § 4; 1990 c 69 § 3.]

Application—2011 c 24: See note following RCW 82.32.080.

Findings—Payment of excise taxes by electronic funds transfer—2006 c 256: "(1) The legislature recognizes the following with respect to the payment of excise taxes to the department of revenue by electronic funds transfer:

(a) Taxpayers required to pay their taxes by electronic funds transfer must do so through the use of either the automated clearinghouse debit method or automated clearinghouse credit method;

(b) For a remittance by electronic funds transfer to be considered timely, the transfer must be completed so that the state receives collectible funds on or before the next banking day following the due date;

(c) For the state to receive collectible funds on or before the next banking day following the due date, taxpayers using the automated clearinghouse debit method must initiate the transfer before 5:00 p.m. pacific time on the due date;

(d) The department of revenue receives information identifying the precise date and time the electronic funds transfer is initiated when a taxpayer uses the debit method; and

(e) The department receives information identifying only the date that the state receives collectible funds when a taxpayer uses the automated clearinghouse credit method.

(2) The legislature therefore finds that a remittance made using the automated clearinghouse debit method should be deemed to be received on the due date if the transfer is initiated on or before 11:59 p.m. pacific time on the due date with an effective payment date on or before the next banking day following the due date. The legislature further finds that because the department does not receive information about when an electronic funds transfer is initiated when a taxpayer uses the automated clearinghouse credit method, such transfers must be completed so that the state receives collectible funds on or before the next banking day following the due date." [2006 c 256 § 5.]

Effective dates—Application—Savings—2006 c 256: See notes following RCW 82.32.045.

Additional notes found at www.leg.wa.gov

82.32.090 Late payment—Disregard of written instructions—Evasion—Penalties. (1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there is assessed a penalty of five percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there is assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there is assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added may be less than five dollars.

(2) If the department of revenue determines that any tax has been substantially underpaid, there is assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there is assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, there is assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added may be less than five dollars. As used in this section, "substantially underpaid" means that the taxpayer has paid less than eighty percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least one thousand dollars.

(3) If a warrant is issued by the department of revenue for the collection of taxes, increases, and penalties, there is added thereto a penalty of ten percent of the amount of the tax, but not less than ten dollars.

(4) If the department finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the department a registration certificate as required by RCW 82.32.030, the department must impose a penalty of five percent of the amount of tax due from that person for the period that the person was not registered as required by RCW 82.32.030. The department may not impose the penalty under this subsection (4) if a person who has engaged in business taxable under this title without first having registered as required by RCW 82.32.030, prior to any notification by the department of the need to register, obtains a registration certificate from the department.

(5) If the department finds that a taxpayer has disregarded specific written instructions as to reporting or tax liabilities, or willfully disregarded the requirement to file returns or remit payment electronically, as provided by RCW 82.32.080, the department must add a penalty of ten percent of the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if

there is a deficiency because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless, in the case of a deficiency, the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department may not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. A taxpayer will be considered to have made a good faith effort to comply with specific written instructions to file returns and/or remit taxes electronically only if the taxpayer can show good cause, as defined in RCW 82.32.080, for the failure to comply with such instructions. A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions. Specific written instructions may be given as a part of a tax assessment, audit, determination, closing agreement, or other written communication, provided that such specific written instructions apply only to the taxpayer addressed or referenced on such communication. Any specific written instructions by the department must be clearly identified as such and must inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection. If the department determines that it is necessary to provide specific written instructions to a taxpayer that does not comply with the requirement to file returns or remit payment electronically as provided in RCW 82.32.080, the specific written instructions must provide the taxpayer with a minimum of forty-five days to come into compliance with its electronic filing and/or payment obligations before the department may impose the penalty authorized in this subsection.

(6) If the department finds that all or any part of a deficiency resulted from engaging in a disregarded transaction, as described in RCW 82.32.655(3), the department must assess a penalty of thirty-five percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under RCW 82.32.655(2). The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under this subsection if, before the department discovers the taxpayer's use of a transaction described under RCW 82.32.655(3), the taxpayer discloses its participation in the transaction to the department.

(7) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due must be added.

(8) The penalties imposed under subsections (1) through (4) of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(9) The department may not impose the evasion penalty in combination with the penalty for disregarding specific

written instructions or the penalty provided in subsection (6) of this section on the same tax found to be due.

(10) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department, and that has a statutorily defined due date. [2011 c 24 § 3; 2010 1st sp.s. c 23 § 203; 2006 c 256 § 6; 2003 1st sp.s. c 13 § 13; 2000 c 229 § 7; 1999 c 277 § 11; 1996 c 149 § 15; 1992 c 206 § 3; 1991 c 142 § 11; 1987 c 502 § 9; 1983 2nd ex.s. c 3 § 23; 1983 c 7 § 32; 1981 c 172 § 8; 1981 c 7 § 2; 1971 ex.s. c 179 § 1; 1967 ex.s. c 149 § 26; 1965 ex.s. c 141 § 3; 1963 ex.s. c 28 § 7; 1961 c 15 § 82.32.090. Prior: 1959 c 197 § 12; 1955 c 110 § 1; 1951 1st ex.s. c 9 § 9; 1949 c 228 § 23; 1937 c 227 § 18; 1935 c 180 § 192; Rem. Supp. 1949 § 8370-192.]

Application—2011 c 24: See note following RCW 82.32.080.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.32.655.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Effective dates—Application—Savings—2006 c 256: See notes following RCW 82.32.045.

Application—2003 1st sp.s. c 13 § 13: "Except as otherwise provided in this section, section 13 of this act applies to all penalties imposed after June 30, 2003. The five percent penalty imposed in section 13(2) of this act applies to all assessments originally issued after June 30, 2003." [2003 1st sp.s. c 13 § 14.]

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

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

Additional notes found at www.leg.wa.gov

82.32.115 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.32.117 Application for court approval of subpoena prior to issuance—No notice required. (1) The department or its duly authorized agent may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must:

(a) State that an order is sought pursuant to this subsection;

(b) Adequately specify the records, documents, or testimony; and

(c) Declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

(2) Where the application under this subsection is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the records or testimony.

(3) The department or its duly authorized agent may seek approval and a court may issue an order under this subsection without prior notice to any person, including the person to

whom the subpoena is directed and the person who is the subject of an investigation.

(4) This section does not preclude the use of other legally authorized means of obtaining records, nor preclude the assertion of any legally recognized privileges.

(5) The department may not disclose any return or tax information, as defined in RCW 82.32.330, obtained in response to a subpoena issued under this section, except as authorized in RCW 82.32.330.

(6) A third party may not be held civilly liable for any harm resulting from that person's compliance with a subpoena issued under the authority of this section.

(7) The entire court file of any proceeding instituted under this section must be sealed and is not open to public inspection by any person except upon order of the court as authorized by law. [2011 c 174 § 401; 2010 c 22 § 4.]

Findings—Intent—2010 c 22: See note following RCW 51.04.040.

82.32.210 Tax warrant—Filing—Lien—Effect.

(Effective January 1, 2012.) (1) If any fee, tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due, the department may issue a warrant in the amount of the unpaid sums, together with interest thereon from the date the warrant is issued until the date of payment. If, however, the department believes that a taxpayer is about to cease business, leave the state, or remove or dissipate the assets out of which fees, taxes or penalties might be satisfied and that any tax or penalty will not be paid when due, it may declare the fee, tax or penalty to be immediately due and payable and may issue a warrant immediately.

(a) Interest imposed before January 1, 1999, is computed at the rate of one percent of the amount of the warrant for each thirty days or portion thereof.

(b) Interest imposed after December 31, 1998, is computed on a daily basis on the amount of outstanding tax or fee at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year. As used in this subsection, "fee" does not include an administrative filing fee such as a court filing fee and warrant fee.

(2) Except as provided in RCW 82.32.212, the department must file a copy of the warrant with the clerk of the superior court of any county of the state in which real and/or personal property of the taxpayer may be found. The clerk is entitled to a filing fee under RCW 36.18.012(10). Upon filing, the clerk will enter in the judgment docket, the name of the taxpayer mentioned in the warrant and in appropriate columns the amount of the fee, tax or portion thereof and any increases and penalties for which the warrant is issued and the date when the copy is filed. The amount of the warrant so docketed is a specific lien upon all goods, wares, merchandise, fixtures, equipment, or other personal property used in the conduct of the business of the taxpayer against whom the warrant is issued, including property owned by third persons who have a beneficial interest, direct or indirect, in the operation of the business, and no sale or transfer of the personal property in any way affects the lien.

(3) The lien is not superior, however, to bona fide interests of third persons that vested before the filing of the warrant when the third persons do not have a beneficial interest,

direct or indirect, in the operation of the business, other than to secure payment of a debt or to receive a regular rental on equipment. The phrase "bona fide interests of third persons" does not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as trustee for unsecured creditors of the taxpayer mentioned in the warrant who executed the chattel or real property mortgage or the document evidencing the credit transaction.

(4) The amount of the warrant so docketed is also a lien upon the title to and interest in all other real and personal property of the taxpayer against whom it is issued the same as a judgment in a civil case duly docketed in the office of the clerk. The warrant so docketed is sufficient to support the issuance of writs of garnishment in favor of the state as provided by law for judgments wholly or partially unsatisfied. [2011 c 131 § 1; 2001 c 146 § 12; 1998 c 311 § 8; 1997 c 157 § 3; 1987 c 405 § 15; 1983 1st ex.s. c 55 § 8; 1967 ex.s. c 89 § 3; 1961 c 15 § 82.32.210. Prior: 1955 c 389 § 38; prior: 1951 1st ex.s. c 9 § 13; 1949 c 228 § 225, part; 1937 c 227 § 20, part; 1935 c 180 § 202, part; Rem. Supp. 1949 § 8370-202, part.]

Effective date—2011 c 131: See note following RCW 82.32.212.

Additional notes found at www.leg.wa.gov

82.32.212 Tax warrant—Notice of lien. (Effective January 1, 2012.) (1) To secure payment of a tax warrant issued by the department under RCW 82.32.210, the department may issue a notice of lien against any real property in which the taxpayer against whom the warrant was issued has an ownership interest, if the total amount for which the warrant was issued exceeds twenty-five thousand dollars and the department determines that issuing the notice of lien would best protect the state's interest in collecting the amount due on the warrant. The department must file the notice of lien with the recording officer of the county where the real property is located. The recording officer is entitled to a filing fee as provided under RCW 36.18.010.

(2)(a) Except as otherwise provided in this section, recording a notice of lien as authorized in this section is in lieu of filing with the clerk of the superior court a copy of the warrant secured by the notice of lien.

(b) Notwithstanding (a) of this subsection (2), the department may file with the superior court a warrant that is secured by a notice of lien under this section if: (i) The department determines that filing the warrant is in the best interest of collecting the amount due on the tax warrant; or (ii) the warrant remains unpaid six months after the notice of lien was issued.

(3) If a warrant has been filed with the clerk of the superior court, the department may issue and record a notice of lien against real property of the taxpayer and file a conditional satisfaction of the warrant with the clerk of the superior court of the county in which the warrant was filed, if the department determines that such actions are in the best interest of collecting the amount due on the warrant.

(a) A warrant for which a conditional satisfaction is filed will continue to accrue interest on the unpaid balance as provided in RCW 82.32.210.

(b)(i) The department may refile a warrant for which a conditional satisfaction has been filed if: (A) The department

determines that refiling the warrant is in the best interest of collecting the amount due on the warrant; or (B) the warrant remains unpaid six months after the notice of lien was issued.

(ii) A warrant is refiled in the same manner as it was originally filed.

(c) A warrant that is refiled as provided in this subsection (3) reinstates the liens provided under RCW 82.32.210 as of the date the warrant is refiled.

(d) For the purposes of this subsection (3), a "conditional satisfaction" is a document issued by the department, which, when filed with the clerk of the superior court of the county in which the warrant was filed, releases the liens provided under RCW 82.32.210 without prejudice to refile the warrant at a later date.

(4) When a taxpayer has requested the department to use the collection authority under this section, in order to determine if the issuance of a notice of lien would best protect the state's interest in collecting the amount due on the warrant, the department may require the taxpayer to:

(a) Provide, at the taxpayer's expense, the department with a current abstract of title as defined by RCW 48.29.010 from a title insurer that possesses a certificate of authority issued under Title 48 RCW; and

(b) Authorize the department to obtain the taxpayer's current credit report.

(5) A notice of lien issued under this section must include the following information:

(a) The name of the taxpayer who has an interest in the real property against which the notice of lien is filed;

(b) The taxpayer's tax registration number issued as provided in RCW 82.32.030;

(c) The number of the warrant issued by the department;

(d) The amount for which the warrant was issued;

(e) The legal description, tax parcel number assigned under RCW 84.40.160, and the street address, if available, of the real property against which the notice of lien is issued; and

(f) Any other information the department determines would be useful.

(6) The notice of lien issued under this section is superior to all other liens and encumbrances, except:

(a) Bona fide interests of third persons that had vested prior to the recording of the notice of lien, if the third persons do not have a beneficial interest, direct or indirect, in the operation of the taxpayer's business, other than the securing of the payment of a debt or the receiving of a regular rental on equipment. For purposes of this subsection, "bona fide interests of third persons" has the same meaning as in RCW 82.32.210; and

(b) Property taxes and special assessments against the property.

(7) The department must release a notice of lien issued under this section as soon as practicable after receipt of payment in full of the amount due on the warrant secured by the notice of lien, including interest accrued as provided in RCW 82.32.210(1) and all recording fees claimed by the recording officer for the recording of the notice of lien and the release of the lien.

(8) The department must release a notice of lien issued under this section within fourteen days if the notice of lien was issued in error. [2011 c 131 § 2.]

Effective date—2011 c 131: "This act takes effect January 1, 2012."
[2011 c 131 § 3.]

82.32.330 Disclosure of return or tax information.

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information are confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under this title or chapter 83.100 RCW is a party in the proceeding;

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding; or

(iii) Brought by the department under RCW 18.27.040 or 19.28.071;

(b) Disclosing, subject to such requirements and conditions as the director prescribes by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department is not required to disclose any information under this subsection if a taxpayer has entered a deferred payment arrangement with the department for the payment of a warrant that has not been filed and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(e) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(f) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(g) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(h) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or

county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(i) Disclosing any such return or tax information to the United States department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United States department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States department of treasury, and the United States department of transportation, or any authorized representative of these federal agencies, for official purposes;

(j) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(k) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection may not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(l) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

(m) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(n) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(o) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

(p) Disclosing real estate excise tax affidavit forms filed under RCW 82.45.150 in the possession of the department, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

(q) Disclosing to local taxing jurisdictions the identity of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for which relief is granted;

(r) Disclosing such return or tax information to the court in respect to the department's application for a subpoena under RCW 82.32.117;

(s) Disclosing to a person against whom the department has asserted liability under RCW 83.100.120 return or tax information pertaining to that person's liability for tax under chapter 83.100 RCW;

(t) Disclosing such return or tax information to the streamlined sales tax governing board, member states of the streamlined sales tax governing board, or authorized representatives of such board or states, for the limited purposes of:

(i) Conducting on behalf of member states sales and use tax audits of taxpayers; or

(ii) Auditing certified service providers or certified automated systems providers; or

(u) Disclosing any such return or tax information when the disclosure is specifically authorized under any other section of the Revised Code of Washington.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does

not constitute a disclosure of tax return or tax information under this section.

(5) Service of a subpoena issued under RCW 82.32.117 does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena under RCW 82.32.117 may disclose the existence or content of the subpoena to that person's legal counsel.

(6) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3) (e), (f), (g), (h), (i), or (m) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in this state for a period of two years thereafter. [2011 c 174 § 404. Prior: 2010 c 112 § 13; 2010 c 106 § 104; prior: 2009 c 563 § 213; 2009 c 309 § 2; 2008 c 81 § 11; 2007 c 6 § 1502; 2006 c 177 § 7; prior: 2005 c 326 § 1; 2005 c 274 § 361; prior: 2000 c 173 § 1; 2000 c 106 § 1; 1998 c 234 § 1; 1996 c 184 § 5; 1995 c 197 § 1; 1991 c 330 § 1; 1990 c 67 § 1; 1985 c 414 § 9; 1984 c 138 § 12; 1969 ex.s. c 104 § 1; 1963 ex.s. c 28 § 10; 1961 c 15 § 82.32.330; prior: 1943 c 156 § 12; 1935 c 180 § 210; Rem. Supp. 1943 § 8370-210.]

Retroactive application—2010 c 112: See note following RCW 82.32.780.

Application—2010 c 106 §§ 104 and 111: "Sections 104(3) (a)(i) and (s) and 111 of this act apply to return or tax information in respect to the tax imposed under chapter 83.100 RCW in the possession of the department of revenue on or after July 1, 2010." [2010 c 106 § 403.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—2006 c 177 §§ 1-9: See note following RCW 82.04.250.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Additional notes found at www.leg.wa.gov

82.32.570 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.32.585 Annual survey requirement for tax preferences. (1)(a) Every person claiming a tax preference that requires a survey under this section must file a complete annual survey with the department.

(i) Except as provided in (a)(ii) of this subsection, the survey is due by April 30th of the year following any calendar year in which a person becomes eligible to claim the tax preference that requires a survey under this section.

(ii) If the tax preference is a deferral of tax, the first survey must be filed by April 30th of the calendar year following the calendar year in which the investment project is certified

by the department as operationally complete, and a survey must be filed by April 30th of each of the seven succeeding calendar years.

(b) The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590.

(2)(a) The survey must include the amount of the tax preference claimed for the calendar year covered by the survey. For a person that claimed an exemption provided in RCW 82.08.025651 or 82.12.025651, the survey must include the amount of tax exempted under those sections in the prior calendar year for each general area or category of research and development for which exempt machinery and equipment and labor and services were acquired in the prior calendar year.

(b) The survey must also include the following information for employment positions in Washington, not to include names of employees, for the year that the tax preference was claimed:

(i) The number of total employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;

(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(c) For persons claiming the tax preference provided under chapter 82.60 or 82.63 RCW, the survey must also include the number of new products or research projects by general classification, and the number of trademarks, patents, and copyrights associated with activities at the investment project.

(d) For persons claiming the credit provided under RCW 82.04.4452, the survey must also include the qualified research and development expenditures during the calendar year for which the credit was claimed, the taxable amount during the calendar year for which the credit was claimed, the number of new products or research projects by general classification, the number of trademarks, patents, and copyrights associated with the research and development activities for which the credit was claimed, and whether the tax preference has been assigned, and who assigned the credit. The definitions in RCW 82.04.4452 apply to this subsection (2)(d).

(e) For persons claiming the tax exemption in RCW 82.08.025651 or 82.12.025651, the survey must also include the general areas or categories of research and development for which machinery and equipment and labor and services were acquired, exempt from tax under RCW 82.08.025651 or 82.12.025651, in the prior calendar year.

(f) If the person filing a survey under this section did not file a survey with the department in the previous calendar year, the survey filed under this section must also include the employment, wage, and benefit information required under (b)(i) through (iv) of this subsection for the calendar year immediately preceding the calendar year for which a tax preference was claimed.

(3) As part of the annual survey, the department may request additional information necessary to measure the results of, or determine eligibility for, the tax preference.

(4) All information collected under this section, except the information required in subsection (2)(a) of this section, is deemed taxpayer information under RCW 82.32.330. Information required in subsection (2)(a) of this section is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in subsection (5) of this section. If the amount of the tax preference claimed as reported on the survey is different than the amount actually claimed or otherwise allowed by the department based on the taxpayer's excise tax returns or other information known to the department, the amount actually claimed or allowed may be disclosed.

(5) Persons for whom the actual amount of the tax reduced or saved is less than ten thousand dollars during the period covered by the survey may request the department to treat the amount of the tax reduction or savings as confidential under RCW 82.32.330.

(6)(a) Except as otherwise provided by law, if a person claims a tax preference that requires an annual survey under this section but fails to submit a complete annual survey by the due date of the survey or any extension under RCW 82.32.590, the department must declare the amount of the tax preference claimed for the previous calendar year to be immediately due. If the tax preference is a deferral of tax, twelve and one-half percent of the deferred tax is immediately due. If the economic benefits of the deferral are passed to a lessee, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(b) The department must assess interest, but not penalties, on the amounts due under this subsection. The interest must be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date the tax preference was claimed, and accrues until the taxes for which the tax preference was claimed are repaid. Amounts due under this subsection are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(7) The department must use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers may be included in any category. The department must report these statistics to the legislature each year by October 1st.

(8) For the purposes of this section:

(a) "Person" has the meaning provided in RCW 82.04.030 and also includes the state and its departments and institutions.

(b) "Tax preference" has the meaning provided in RCW 43.136.021 and includes only the tax preferences requiring a survey under this section. [2011 c 23 § 6; 2010 c 114 § 102.]

Findings—2011 c 23: See note following RCW 82.08.02565.

Effective date—Construction—2011 c 23: See notes following RCW 82.08.025651.

Application—2010 c 114: "Those provisions of sections 101 through 103, 105 through 109, 111 through 116, 118 through 122, 124, 126 through 128, 130, 132 through 149, and 151 through 153 of this act that relate to annual surveys and annual reports apply beginning with annual surveys and annual reports due in 2011 and thereafter." [2010 c 114 § 203.]

Finding—Intent—2010 c 114: "(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order

to make policy choices regarding the best use of limited state resources, the legislature needs information on how a tax preference is used. In recent years, the legislature has enacted or extended numerous tax preferences that require the reporting of information to the department of revenue. Although there are many similarities in the requirements, and only two distinct accountability documents, there is a lack of uniformity in the information reported, penalties for failure to file, due dates, filing extensions, and filing requirements. Greater uniformity in the data reported is necessary to adequately compare tax preference programs. The legislature intends to create two sets of uniform reporting requirements that apply to the existing tax preferences and can be used in future legislation granting additional tax preferences.

(2) The legislative fiscal committees or the department of revenue are required to study many of the existing tax preferences and report to the legislature at least once. Because chapter 43.136 RCW now requires the joint legislative audit and review committee, with support from the department of revenue, to comprehensively review most tax preferences every ten years and provide a report to the legislature, a number of redundant studies by the legislative fiscal committees and the department of revenue have been eliminated. However, the department of revenue will continue to prepare summary descriptive statistics by category and report the statistics to the legislature each year." [2010 c 114 § 101.]

82.32.590 Annual surveys or reports for tax incentives—Failure to file. (1) If the department finds that the failure of a taxpayer to file an annual survey under RCW 82.32.585 or annual report under RCW 82.32.534 by the due date was the result of circumstances beyond the control of the taxpayer, the department must extend the time for filing the survey or report. The extension is for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

(2) In making a determination whether the failure of a taxpayer to file an annual survey or annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department must be guided by rules adopted by the department for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(3)(a) Subject to the conditions in this subsection (3), a taxpayer who fails to file an annual report or annual survey required under subsection (1) of this section by the due date of the report or survey is entitled to an extension of the due date. A request for an extension under this subsection (3) must be made in writing to the department.

(b) To qualify for an extension under this subsection (3), a taxpayer must have filed all annual reports and surveys, if any, due in prior years under subsection (1) of this section by their respective due dates, beginning with annual reports and surveys due in calendar year 2010.

(c) An extension under this subsection (3) is for ninety days from the original due date of the annual report or survey.

(d) No taxpayer may be granted more than one ninety-day extension under this subsection (3). [2011 c 174 § 306. Prior: 2010 c 137 § 1; 2010 c 114 § 135; 2009 c 461 § 7; prior: 2008 c 81 § 13; 2008 c 15 § 7; prior: 2006 c 354 § 17; 2006 c 300 § 10; 2006 c 177 § 8; 2006 c 112 § 7; 2006 c 84 § 7; 2005 c 514 § 1001.]

Application—2010 c 137: "Section 1 of this act applies to annual surveys and reports due under any of the statutes listed in RCW 82.32.590(1) in calendar year 2011 and thereafter." [2010 c 137 § 2.]

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—Contingent effective date—2009 c 461: See note following RCW 82.04.280.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Effective date—2008 c 15: See note following RCW 82.82.010.

Effective dates—2006 c 354: See note following RCW 82.04.4268.

Effective dates—Contingent effective date—2006 c 300: See note following RCW 82.04.261.

Effective date—2006 c 177 §§ 1-9: See note following RCW 82.04.250.

Severability—2006 c 112: See RCW 28B.67.901.

Effective date—2006 c 84 §§ 2-8: See note following RCW 82.04.2404.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

Retroactive application—2005 c 514 § 1001: "Section 1001 of this act applies retroactively to annual surveys required under RCW 82.04.4452 that are due after December 31, 2004." [2005 c 514 § 1312.]

Effective date—2005 c 514: See note following RCW 82.04.4272.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

82.32.800 Contributions of high technology research and development tax credit—Opportunity expansion account. A person eligible for the high technology research and development tax credit under RCW 82.04.4452 may contribute all or any portion of the credit to the opportunity expansion account hereby created in the state treasury. The department must create the forms and processes to allow a person to make such an election easily and quickly by means of checking a box. By May 1, 2012, and by May 1st of every year thereafter, the department must report the amount so contributed and certify the amount to the state treasurer. By July 1, 2012, and by July 1st of every year thereafter, the state treasurer must transfer the amount into the opportunity expansion account. Money in the account may only be appropriated for the purposes specified in RCW 28B.145.060. [2011 1st sp.s. c 13 § 10.]

Finding—Intent—Short title—Effective date—2011 1st sp.s. c 13: See RCW 28B.145.005, 28B.145.900, and 28B.145.901.

Chapter 82.36 RCW

MOTOR VEHICLE FUEL TAX

Sections

82.36.400 Other offenses—Penalties.

82.36.400 Other offenses—Penalties. (1) It shall be unlawful for any person to commit any of the following acts:

(a) To display, or cause to permit to be displayed, or to have in possession, any motor vehicle fuel license knowing the same to be fictitious or to have been suspended, canceled, revoked or altered;

(b) To lend to, or knowingly permit the use of, by one not entitled thereto, any motor vehicle fuel license issued to the person lending it or permitting it to be used;

(c) To display or to represent as one's own any motor vehicle fuel license not issued to the person displaying the same;

(d) To use a false or fictitious name or give a false or fictitious address in any application or form required under the

provisions of this chapter, or otherwise commit a fraud in any application, record, or report;

(e) To refuse to permit the director, or any agent appointed by him or her in writing, to examine his or her books, records, papers, storage tanks, or other equipment pertaining to the use or sale and delivery of motor vehicle fuels within the state.

(2) Except as otherwise provided, any person violating any of the provisions of this chapter is guilty of a gross misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars nor more than one thousand dollars and costs of prosecution, or imprisonment for up to three hundred sixty-four days, or both. [2011 c 96 § 57; 2003 c 53 § 402; 1998 c 176 § 46; 1971 ex.s. c 156 § 3; 1967 c 153 § 6; 1961 c 15 § 82.36.400. Prior: 1949 c 234 § 2, part; 1933 c 58 § 19, part; Rem. Supp. 1949 § 8327-19, part; prior: 1921 c 173 § 12, part.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

Chapter 82.45 RCW

EXCISE TAX ON REAL ESTATE SALES

Sections

82.45.030 "Selling price," "total consideration paid or contracted to be paid," defined.

82.45.060 Tax on sale of property.

82.45.030 "Selling price," "total consideration paid or contracted to be paid," defined. (1) As used in this chapter, the term "selling price" means the true and fair value of the property conveyed. If property has been conveyed in an arm's length transaction between unrelated persons for a valuable consideration, a rebuttable presumption exists that the selling price is equal to the total consideration paid or contracted to be paid to the transferor, or to another for the transferor's benefit.

(2) If the sale is a transfer of a controlling interest in an entity with an interest in real property located in this state, the selling price shall be the true and fair value of the real property owned by the entity and located in this state. If the true and fair value of the real property located in this state cannot reasonably be determined, the selling price shall be determined according to subsection (4) of this section.

(3) As used in this section, "total consideration paid or contracted to be paid" includes money or anything of value, paid or delivered or contracted to be paid or delivered in return for the sale, and shall include the amount of any lien, mortgage, contract indebtedness, or other incumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale.

Total consideration shall not include the amount of any outstanding lien or incumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements.

When a transfer or conveyance is made by deed in lieu of foreclosure to satisfy a deed of trust, total consideration shall not include the amount of any relocation assistance provided to the transferor.

(4) If the total consideration for the sale cannot be ascertained or the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined, the market value assessment for the property maintained on the county property tax rolls at the time of the sale shall be used as the selling price. [2011 c 58 § 15; 1993 sp.s. c 25 § 503; 1969 ex.s. c 223 § 28A.45.030. Prior: 1951 2nd ex.s. c 19 § 2; 1951 1st ex.s. c 11 § 8. Formerly RCW 28A.45.030, 28.45.030.]

Findings—Intent—Short title—2011 c 58: See notes following RCW 61.24.005.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Additional notes found at www.leg.wa.gov

82.45.060 Tax on sale of property. There is imposed an excise tax upon each sale of real property at the rate of one and twenty-eight one-hundredths percent of the selling price. An amount equal to six and one-tenth percent of the proceeds of this tax to the state treasurer must be deposited in the public works assistance account created in RCW 43.155.050: PROVIDED, That during the fiscal year 2011, six and one-tenth percent of the proceeds of this tax must be deposited in the general fund for general purpose expenditures. Except as otherwise provided in this section, an amount equal to one and six-tenths percent of the proceeds of this tax to the state treasurer must be deposited in the city-county assistance account created in RCW 43.08.290. During the 2011-2013 fiscal biennium, 1.546 percent of the proceeds of this tax to the state treasurer must be deposited in the city-county assistance account. [2011 1st sp.s. c 50 § 975; 2011 1st sp.s. c 48 § 7035; 2005 c 450 § 1; 2000 c 103 § 15; 1987 c 472 § 14; 1983 2nd ex.s. c 3 § 20; 1982 1st ex.s. c 35 § 14; 1980 c 154 § 2; 1969 ex.s. c 223 § 28A.45.060. Prior: 1951 1st ex.s. c 11 § 5. Formerly RCW 28A.45.060, 28.45.060.]

Reviser's note: This section was amended by 2011 1st sp.s. c 48 § 7035 and by 2011 1st sp.s. c 50 § 975, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2005 c 450: "This act takes effect August 1, 2005." [2005 c 450 § 4.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Additional notes found at www.leg.wa.gov

Chapter 82.46 RCW

COUNTIES AND CITIES—EXCISE TAX ON REAL ESTATE SALES

Sections

82.46.010	Tax on sale of real property authorized—Proceeds dedicated to local capital projects—Additional tax authorized—Maximum rates.
82.46.035	Additional tax—Certain counties and cities—Ballot proposition—Use limited to capital projects—Temporary rescindment for noncompliance. (<i>Effective until June 30, 2012.</i>)
82.46.035	Additional tax—Certain counties and cities—Ballot proposition—Use limited to capital projects—Temporary rescindment for noncompliance. (<i>Effective June 30, 2012.</i>)

82.46.010 Tax on sale of real property authorized—Proceeds dedicated to local capital projects—Additional tax authorized—Maximum rates. (1) The legislative authority of any county or city must identify in the adopted budget the capital projects funded in whole or in part from the proceeds of the tax authorized in this section, and must indicate that such tax is intended to be in addition to other funds that may be reasonably available for such capital projects.

(2)(a) The legislative authority of any county or any city may impose an excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-quarter of one percent of the selling price. The revenues from this tax must be used by any city or county with a population of five thousand or less and any city or county that does not plan under RCW 36.70A.040 for any capital purpose identified in a capital improvements plan and local capital improvements, including those listed in RCW 35.43.040.

(b) After April 30, 1992, revenues generated from the tax imposed under this subsection (2) in counties over five thousand population and cities over five thousand population that are required or choose to plan under RCW 36.70A.040 must be used solely for financing capital projects specified in a capital facilities plan element of a comprehensive plan and housing relocation assistance under RCW 59.18.440 and 59.18.450. However, revenues (i) pledged by such counties and cities to debt retirement prior to April 30, 1992, may continue to be used for that purpose until the original debt for which the revenues were pledged is retired, or (ii) committed prior to April 30, 1992, by such counties or cities to a project may continue to be used for that purpose until the project is completed.

(3) In lieu of imposing the tax authorized in RCW 82.14.030(2), the legislative authority of any county or any city may impose an additional excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-half of one percent of the selling price.

(4) Taxes imposed under this section must be collected from persons who are taxable by the state under chapter 82.45 RCW upon the occurrence of any taxable event within the unincorporated areas of the county or within the corporate limits of the city, as the case may be.

(5) Taxes imposed under this section must comply with all applicable rules, regulations, laws, and court decisions regarding real estate excise taxes as imposed by the state under chapter 82.45 RCW.

(6) As used in this section, "city" means any city or town and "capital project" means those public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets; roads; highways; sidewalks; street and road lighting systems; traffic signals; bridges; domestic water systems; storm and sanitary sewer systems; parks; recreational facilities; law enforcement facilities; fire protection facilities; trails; libraries; administrative and/or judicial facilities; river and/or waterway flood control projects by those jurisdictions that, prior to June 11, 1992, have expended funds derived from the tax authorized by this section for such

purposes; and, until December 31, 1995, housing projects for those jurisdictions that, prior to June 11, 1992, have expended or committed to expend funds derived from the tax authorized by this section or the tax authorized by RCW 82.46.035 for such purposes.

(7) From July 22, 2011, until December 31, 2016, a city or county may use the greater of one hundred thousand dollars or thirty-five percent of available funds under this section, but not to exceed one million dollars per year, for the operations and maintenance of existing capital projects as defined in subsection (6) of this section. [2011 c 354 § 1; 1994 c 272 § 1; 1992 c 221 § 1; 1990 1st ex.s. c 17 § 36; 1982 1st ex.s. c 49 § 11.]

Expenditures prior to June 11, 1992: "All expenditures of revenues collected under RCW 82.46.010 made prior to June 11, 1992, are deemed to be in compliance with RCW 82.46.010." [1992 c 221 § 4.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional notes found at www.leg.wa.gov

82.46.035 Additional tax—Certain counties and cities—Ballot proposition—Use limited to capital projects—Temporary rescindment for noncompliance. (Effective until June 30, 2012.) (1) The legislative authority of any county or city must identify in the adopted budget the capital projects funded in whole or in part from the proceeds of the tax authorized in this section, and must indicate that such tax is intended to be in addition to other funds that may be reasonably available for such capital projects.

(2) The legislative authority of any county or any city that plans under RCW 36.70A.040(1) may impose an additional excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-quarter of one percent of the selling price. Any county choosing to plan under RCW 36.70A.040(2) and any city within such a county may only adopt an ordinance imposing the excise tax authorized by this section if the ordinance is first authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters.

(3) Revenues generated from the tax imposed under subsection (2) of this section must be used by such counties and cities solely for financing capital projects specified in a capital facilities plan element of a comprehensive plan. However, revenues (a) pledged by such counties and cities to debt retirement prior to March 1, 1992, may continue to be used for that purpose until the original debt for which the revenues were pledged is retired, or (b) committed prior to March 1, 1992, by such counties or cities to a project may continue to be used for that purpose until the project is completed.

(4) Revenues generated by the tax imposed by this section must be deposited in a separate account.

(5) As used in this section: (a) "City" means any city or town; (b) "capital project" means those public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, bridges, municipally

owned heavy rail short line railroads, domestic water systems, storm and sanitary sewer systems, and planning, construction, reconstruction, repair, rehabilitation, or improvement of parks; and (c) "short line railroads" means class III railroads as defined by the United States surface transportation board.

(6) When the governor files a notice of noncompliance under RCW 36.70A.340 with the secretary of state and the appropriate county or city, the county or city's authority to impose the additional excise tax under this section is temporarily rescinded until the governor files a subsequent notice rescinding the notice of noncompliance.

(7) A city or county may use revenue generated under subsection (2) of this section for municipally owned heavy short line railroads only if the revenue was collected prior to December 31, 2008, and may not use more than twenty-five percent of the total revenue generated under subsection (2) of this section for municipally owned heavy short line railroads.

(8) From July 22, 2011, until December 31, 2016, a city or county may use the greater of one hundred thousand dollars or thirty-five percent of available funds under this section, but not to exceed one million dollars per year, for operations and maintenance of existing capital projects as defined in subsection (5) of this section, and counties may use available funds under this section for the payment of existing debt service incurred for capital projects as defined in RCW 82.46.010. If a county uses available funds for payment of existing debt service under RCW 82.46.010, the total amount used for payment of debt service and any amounts used for operations and maintenance is subject to the limits in this subsection. [2011 c 354 § 2; 2009 c 211 § 1. Prior: 1992 c 221 § 3; 1991 sp.s. c 32 § 33; 1990 1st ex.s. c 17 § 38.]

Expiration date—2011 c 354 § 2: "Section 2 of this act expires June 30, 2012." [2011 c 354 § 4.]

Expiration date—2009 c 211: "This act expires June 30, 2012." [2009 c 211 § 2.]

Additional notes found at www.leg.wa.gov

82.46.035 Additional tax—Certain counties and cities—Ballot proposition—Use limited to capital projects—Temporary rescindment for noncompliance. (Effective June 30, 2012.) (1) The legislative authority of any county or city must identify in the adopted budget the capital projects funded in whole or in part from the proceeds of the tax authorized in this section, and must indicate that such tax is intended to be in addition to other funds that may be reasonably available for such capital projects.

(2) The legislative authority of any county or any city that plans under RCW 36.70A.040(1) may impose an additional excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-quarter of one percent of the selling price. Any county choosing to plan under RCW 36.70A.040(2) and any city within such a county may only adopt an ordinance imposing the excise tax authorized by this section if the ordinance is first authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters.

(3) Revenues generated from the tax imposed under subsection (2) of this section must be used by such counties and cities solely for financing capital projects specified in a capital facilities plan element of a comprehensive plan. However, revenues (a) pledged by such counties and cities to debt retirement prior to March 1, 1992, may continue to be used for that purpose until the original debt for which the revenues were pledged is retired, or (b) committed prior to March 1, 1992, by such counties or cities to a project may continue to be used for that purpose until the project is completed.

(4) Revenues generated by the tax imposed by this section must be deposited in a separate account.

(5) As used in this section, "city" means any city or town and "capital project" means those public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, bridges, domestic water systems, storm and sanitary sewer systems, and planning, construction, reconstruction, repair, rehabilitation, or improvement of parks.

(6) When the governor files a notice of noncompliance under RCW 36.70A.340 with the secretary of state and the appropriate county or city, the county or city's authority to impose the additional excise tax under this section is temporarily rescinded until the governor files a subsequent notice rescinding the notice of noncompliance.

(7) From June 30, 2012, until December 31, 2016, a city or county may use the greater of one hundred thousand dollars or thirty-five percent of available funds under this section, but not to exceed one million dollars per year, for operations and maintenance of existing capital projects as defined in subsection (5) of this section, and counties may use available funds under this section for the payment of existing debt service incurred for capital projects as defined in RCW 82.46.010. If a county uses available funds for payment of existing debt service under RCW 82.46.010, the total amount used for payment of debt service and any amounts used for operations and maintenance is subject to the limits in this subsection. [2011 c 354 § 3. Prior: 1992 c 221 § 3; 1991 sp.s. c 32 § 33; 1990 1st ex.s. c 17 § 38.]

Effective date—2011 c 354 § 3: "Section 3 of this act takes effect June 30, 2012." [2011 c 354 § 5.]

Additional notes found at www.leg.wa.gov

Chapter 82.50 RCW

TRAVEL TRAILERS AND CAMPERS EXCISE TAX

Sections

82.50.250 Term "house trailer" construed.

82.50.250 Term "house trailer" construed. Whenever this chapter refers to chapter 46.12, 46.16A, or 82.44 RCW, with references to "house trailers", the term "house trailer" as used in those chapters shall be construed to include and embrace "mobile home and travel trailer" as used in chapter 149, Laws of 1967 ex. sess. [2011 c 171 § 124; 1967 ex.s. c 149 § 59.]

Reviser's note: See note following RCW 82.50.010.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Chapter 82.80 RCW

LOCAL OPTION TRANSPORTATION TAXES

Sections

82.80.055 Congestion reduction charge. (*Expires December 31, 2014.*)
82.80.100 Regional transportation investment district—Local option vehicle license fee.

82.80.055 Congestion reduction charge. (*Expires December 31, 2014.*) (1)(a) Except as provided in subsection (2) of this section, the governing body of a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW and is operating a public transportation system may impose, if approved by a majority of the voters within that county or a two-thirds majority of the governing body, an annual congestion reduction charge of up to twenty dollars per vehicle registered in the boundaries of the county for each vehicle subject to vehicle license fees under RCW 46.17.350(1) (a), (c), (d), (e), (g), (h), (j), (n), (o), (p), or (q) and for each vehicle subject to gross weight license fees under RCW 46.17.355 with an unladen weight of six thousand pounds or less.

(b) Prior to the imposition of a congestion reduction charge authorized under (a) of this subsection, a governing body must complete a congestion reduction plan indicating the proposed expenditures of the proceeds of the congestion reduction charge.

(c) If a governing body that imposes a congestion reduction charge authorized under (a) of this subsection completed a regional transit task force evaluating system improvements and efficiencies within two years prior to the imposition of the charge, the proceeds from the charge must be expended in a manner consistent with the recommendations of the regional transit task force.

(d) A governing body that imposes a congestion reduction charge authorized under (a) of this subsection must complete a report by July 1, 2012, detailing the expenditures of the proceeds of the congestion reduction charge through June 1, 2012.

(e) A governing body that imposes a congestion reduction charge authorized under (a) of this subsection must complete a report by June 1, 2014, detailing the expenditures of the proceeds of the congestion reduction charge.

(2) The governing body of a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW and is operating a public transportation system may not impose a congestion reduction charge authorized under subsection (1)(a) of this section for a passenger-only ferry transportation improvement, unless the charge is first approved by a majority of the voters within that county.

(3) The governing body of a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW and is operating a public transportation system shall contract with the department of licensing as provided under RCW 46.68.470 for the collection of the congestion reduction charge.

(4) A congestion reduction charge imposed under this section may not be assessed until six months after approval.

(5) A congestion reduction charge imposed under this section applies only for vehicle registration renewals and is effective upon the registration renewal date as provided by the department of licensing.

(6) The following vehicles are exempt from the congestion reduction charge imposed under this section:

(a) Farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181;

(b) Off-road vehicles as defined in RCW 46.04.365;

(c) Nonhighway vehicles as defined in RCW 46.09.310;

(d) Vehicles registered under chapter 46.87 RCW and the international registration plan; and

(e) Snowmobiles as defined in RCW 46.04.546.

(7) The authority to impose a congestion reduction charge authorized in subsection (1)(a) of this section expires with vehicle registrations that expire two years after the imposition of the charge or no later than June 30, 2014, whichever comes first.

(8) A congestion reduction charge authorized under subsection (1)(a) of this section may only be imposed after June 30, 2014, if approved by a majority of the voters within a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW and is operating a public transportation system.

(9) This section expires December 31, 2014. [2011 c 373 § 2.]

Intent—2011 c 373: "The legislature recognizes that public transportation provides many benefits to the citizens of the state and the environment, including through public transportation's ability to alleviate congestion and offset the burdens placed by general vehicular traffic on the state's transportation infrastructure. In these challenging economic times, many transit agencies find themselves struggling to continue to provide a level of service that reduces congestion.

The legislature further recognizes that King county conducted a regional transit task force in 2010 that considered a policy framework for the potential future growth and, if necessary, contraction of King county's transit system. The task force members were selected to represent a broad diversity of interests and perspectives. The task force recommendations, which were unanimously accepted, addressed key elements, such as the adoption of performance measures, controlling operating costs, developing policy guidance for making service reductions, and clear and transparent guidelines for service allocation. As a result of the work done by the task force and King county's commitment to comply with the recommendations, it is the intent of the legislature that King county be provided the opportunity to impose a temporary congestion reduction charge, which is separate and distinct from the base motor vehicle license fee, that can help address its revenue shortfalls during this economic crisis and allow it to continue reducing congestion and the corresponding burdens placed on the highway system on some of the state's most crowded corridors.

The legislature recognizes that the title of Initiative Measure No. 1053 states that it applies only to tax and fee increases imposed by state government, and that the text of the initiative requires a two-thirds majority only for tax increases. The legislature further recognizes that Initiative Measure No. 1053 does not apply to local government. Despite these facts, this act requires a two-thirds majority of the metropolitan King county council in order to implement a local option fee, in the form of a congestion reduction charge, to help fund King county metro transit service. Faced with the potential loss of hundreds of thousands of hours of vital transit service, it is the intent of the legislature to provide King county with this temporary local option funding mechanism. It is further the intent of the legislature not to expand the parameters of Initiative Measure No. 1053 beyond what the voters intended and thus interfere with local control or limit the ability of local governments to provide services to the people of Washington." [2011 c 373 § 1.]

82.80.100 Regional transportation investment district—Local option vehicle license fee. (1) Upon approval of a majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may set and impose an annual local option vehicle license fee, or a schedule of fees based upon the age of the vehicle, of up to one hundred dollars per motor vehicle registered within the boundaries of the region on every motor vehicle. As used in this section "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road vehicles as defined in RCW 46.04.365, nonhighway vehicles as defined in RCW 46.09.310, and snowmobiles as defined in RCW 46.04.546. Vehicles registered under chapter 46.87 RCW and the international registration plan are exempt from the annual local option vehicle license fee set forth in this section. The department of licensing shall administer and collect this fee on behalf of regional transportation investment districts and remit this fee to the custody of the state treasurer for monthly distribution under RCW 82.80.080.

(2) The local option vehicle license fee applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the department of licensing.

(3) A regional transportation investment district imposing the local option vehicle license fee or initiating an exemption process shall enter into a contract with the department of licensing. The contract must contain provisions that fully recover the costs to the department of licensing for collection and administration of the fee.

(4) A regional transportation investment district imposing the local option fee shall delay the effective date of the local option vehicle license fee imposed by this section at least six months from the date of the final certification of the approval election to allow the department of licensing to implement the administration and collection of or exemption from the fee. [2011 c 171 § 125; 2002 c 56 § 408.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

Chapter 82.83 RCW

CARBONATED BEVERAGE TAX

Sections

82.83.010 through 82.83.050 Repealed.

82.83.010 through 82.83.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 84

PROPERTY TAXES

Chapters

84.33 Timber and forest lands.

84.34 Open space, agricultural, timber lands—Current use—Conservation futures.

- 84.36 Exemptions.**
84.40 Listing of property.
84.52 Levy of taxes.

Chapter 84.33 RCW
TIMBER AND FOREST LANDS

Sections

- 84.33.035 Definitions.
 84.33.078 Harvesting and marketing costs for state or local government harvests.

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

(1) "Agricultural methods" means the cultivation of trees that are grown on land prepared by intensive cultivation and tilling, such as irrigating, plowing, or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising trees such as Christmas trees and short-rotation hardwoods.

(2) "Average rate of inflation" means the annual rate of inflation as determined by the department averaged over the period of time as provided in RCW 84.33.220 (1) and (2). This rate must be published in the state register by the department not later than January 1st of each year for use in that assessment year.

(3) "Composite property tax rate" for a county means the total amount of property taxes levied upon forest lands by all taxing districts in the county other than the state, divided by the total assessed value of all forest land in the county.

(4) "Contiguous" means land adjoining and touching other property held by the same ownership. Land divided by a public road, but otherwise an integral part of a timber growing and harvesting operation, is considered contiguous. Solely for the purposes of this subsection (4), "same ownership" has the same meaning as in RCW 84.34.020(6).

(5) "Forest land" is synonymous with "designated forest land" and means any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres that is or are devoted primarily to growing and harvesting timber. Designated forest land means the land only and does not include a residential homesite. The term includes land used for incidental uses that are compatible with the growing and harvesting of timber but no more than ten percent of the land may be used for such incidental uses. It also includes the land on which appurtenances necessary for the production, preparation, or sale of the timber products exist in conjunction with land producing these products.

(6) "Harvested" means the time when in the ordinary course of business the quantity of timber by species is first definitely determined. The amount harvested must be determined by the Scribner Decimal C Scale or other prevalent measuring practice adjusted to arrive at substantially equivalent measurements, as approved by the department.

(7) "Harvester" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or

industrial use. When the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, the harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in the timber. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester.

(8) "Harvesting and marketing costs" means only those costs directly associated with harvesting the timber from the land and delivering it to the buyer and may include the costs of disposing of logging residues. Any other costs that are not directly and exclusively related to harvesting and marketing of the timber, such as costs of permanent roads or costs of reforesting the land following harvest, are not harvesting and marketing costs.

(9) "Incidental use" means a use of designated forest land that is compatible with its purpose for growing and harvesting timber. An incidental use may include a gravel pit, a shed or land used to store machinery or equipment used in conjunction with the timber enterprise, and any other use that does not interfere with or indicate that the forest land is no longer primarily being used to grow and harvest timber.

(10) "Local government" means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi-municipal corporation, or other political subdivision authorized to levy special benefit assessments for sanitary or storm sewerage systems, domestic water supply or distribution systems, or road construction or improvement purposes.

(11) "Local improvement district" means any local improvement district, utility local improvement district, local utility district, road improvement district, or any similar unit created by a local government for the purpose of levying special benefit assessments against property specially benefited by improvements relating to the districts.

(12) "Owner" means the party or parties having the fee interest in land, except where land is subject to a real estate contract "owner" means the contract vendee.

(13) "Primarily" or "primary use" means the existing use of the land is so prevalent that when the characteristic use of the land is evaluated any other use appears to be conflicting or nonrelated.

(14) "Short-rotation hardwoods" means hardwood trees, such as but not limited to hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than fifteen years.

(15) "Small harvester" means every person who from his or her own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use in an amount not exceeding two million board feet in a calendar year. When the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal cor-

poration therein so fells, cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in the timber. Small harvester does not include persons performing under contract the necessary labor or mechanical services for a harvester, and it does not include the harvesters of Christmas trees or short-rotation hardwoods.

(16) "Special benefit assessments" means special assessments levied or capable of being levied in any local improvement district or otherwise levied or capable of being levied by a local government to pay for all or part of the costs of a local improvement and which may be levied only for the special benefits to be realized by property by reason of that local improvement.

(17) "Stumpage value of timber" means the appropriate stumpage value shown on tables prepared by the department under RCW 84.33.091. However, for timber harvested from public land and sold under a competitive bidding process, stumpage value means the actual amount paid to the seller in cash or other consideration. The stumpage value of timber from public land does not include harvesting and marketing costs if the timber from public land is harvested by, or under contract for, the United States or any instrumentality of the United States, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein. Whenever payment for the stumpage includes considerations other than cash, the value is the fair market value of the other consideration. If the other consideration is permanent roads, the value of the roads must be the appraised value as appraised by the seller.

(18) "Timber" means forest trees, standing or down, on privately or publicly owned land, and except as provided in RCW 84.33.170 includes Christmas trees and short-rotation hardwoods.

(19) "Timber assessed value" for a county means the sum of: (a) The total stumpage value of timber harvested from publicly owned land in the county multiplied by the public timber ratio, plus; (b) the total stumpage value of timber harvested from privately owned land in the county multiplied by the private timber ratio. The numerator of the public timber ratio is the rate of tax imposed by the county under RCW 84.33.051 on public timber harvests for the year of the calculation. The numerator of the private timber ratio is the rate of tax imposed by the county under RCW 84.33.051 on private timber harvests for the year of the calculation. The denominator of the private timber ratio and the public timber ratio is the composite property tax rate for the county for taxes due in the year of the calculation, expressed as a percentage of assessed value. The department must use the stumpage value of timber harvested during the most recent four calendar quarters for which the information is available. The department must calculate the timber assessed value for each county before October 1st of each year.

(20) "Timber assessed value" for a taxing district means the timber assessed value for the county multiplied by a ratio. The numerator of the ratio is the total assessed value of forest land in the taxing district. The denominator is the total

assessed value of forest land in the county. As used in this section, "assessed value of forest land" means the assessed value of forest land for taxes due in the year the timber assessed value for the county is calculated plus an additional value for public forest land. The additional value for public forest land is the product of the number of acres of public forest land that are available for timber harvesting determined under RCW 84.33.089 and the average assessed value per acre of private forest land in the county.

(21) "Timber management plan" means a plan prepared by a trained forester, or any other person with adequate knowledge of timber management practices, concerning the use of the land to grow and harvest timber. Such a plan includes:

- (a) A legal description of the forest land;
- (b) A statement that the forest land is held in contiguous ownership of twenty or more acres and is primarily devoted to and used to grow and harvest timber;
- (c) A brief description of the timber on the forest land or, if the timber on the land has been harvested, the owner's plan to restock the land with timber;
- (d) A statement about whether the forest land is also used to graze livestock;
- (e) A statement about whether the land has been used in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW; and
- (f) If the land has been recently harvested or supports a growth of brush and noncommercial type timber, a description of the owner's plan to restock the forest land within three years. [2011 c 101 § 2; 2004 c 177 § 1; 2003 c 313 § 12. Prior: 2001 c 249 § 1; 2001 c 97 § 1; 1995 c 165 § 1; 1986 c 315 § 1; 1984 c 204 § 1.]

Effective date—2004 c 177: "This act takes effect January 1, 2005." [2004 c 177 § 8.]

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Additional notes found at www.leg.wa.gov

84.33.078 Harvesting and marketing costs for state or local government harvests. If the timber from public land is harvested by the state, its departments and institutions and political subdivisions, or any municipal corporation therein, the governmental unit, or governmental units, that harvest or market the timber must provide the harvester purchasing the timber with its harvesting and marketing costs as defined in RCW 84.33.035. [2011 c 101 § 3; 2004 c 177 § 4; 2003 c 313 § 11; 1986 c 65 § 1; 1984 c 204 § 22; 1983 1st ex.s. c 62 § 9.]

Effective date—2004 c 177: See note following RCW 84.33.035.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Short title—Intent—Effective dates—Applicability—1983 1st ex.s. c 62: See notes following RCW 84.36.477.

Additional notes found at www.leg.wa.gov

Chapter 84.34 RCW

OPEN SPACE, AGRICULTURAL, TIMBER LANDS—
CURRENT USE—CONSERVATION FUTURES

Sections

84.34.020 Definitions.

84.34.020 Definitions. As used in this chapter, unless a different meaning is required by the context:

(1) "Open space land" means (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly, or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification, or (c) any land meeting the definition of farm and agricultural conservation land under subsection (8) of this section. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b)(iii) of this subsection for the purpose of promoting conservation of wetlands.

(2) "Farm and agricultural land" means:

(a) Any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres:

(i) Devoted primarily to the production of livestock or agricultural commodities for commercial purposes;

(ii) Enrolled in the federal conservation reserve program or its successor administered by the United States department of agriculture; or

(iii) Other similar commercial activities as may be established by rule;

(b)(i) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to, as of January 1, 1993:

(A) One hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(B) On or after January 1, 1993, two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(ii) For the purposes of (b)(i) of this subsection, "gross income from agricultural uses" includes, but is not limited to, the wholesale value of agricultural products donated to non-profit food banks or feeding programs;

(c) Any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income as of January 1, 1993, of:

(i) One thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(ii) On or after January 1, 1993, fifteen hundred dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter. Parcels of land described in (b)(i)(A) and (c)(i) of this subsection will, upon any transfer of the property excluding a transfer to a surviving spouse or surviving state registered domestic partner, be subject to the limits of (b)(i)(B) and (c)(ii) of this subsection;

(d) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which meet one of the following criteria:

(i) Has produced a gross income from agricultural uses equivalent to two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(ii) Has standing crops with an expectation of harvest within seven years, except as provided in (d)(iii) of this subsection, and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year. For the purposes of this subsection (2)(d)(ii), "standing crop" means Christmas trees, vineyards, fruit trees, or other perennial crops that: (A) Are planted using agricultural methods normally used in the commercial production of that particular crop; and (B) typically do not produce harvestable quantities in the initial years after planting; or

(iii) Has a standing crop of short rotation hardwoods with an expectation of harvest within fifteen years and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year;

(e) Any lands including incidental uses as are compatible with agricultural purposes, including wetlands preservation, provided such incidental use does not exceed twenty percent of the classified land and the land on which appurtenances necessary to the production, preparation, or sale of the agricultural products exist in conjunction with the lands producing such products. Agricultural lands also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands";

(f) The land on which housing for employees and the principal place of residence of the farm operator or owner of land classified pursuant to (a) of this subsection is sited if: The housing or residence is on or contiguous to the classified parcel; and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes; or

(g) Any land that is used primarily for equestrian related activities for which a charge is made, including, but not limited to, stabling, training, riding, clinics, schooling, shows, or

grazing for feed and that otherwise meet the requirements of (a), (b), or (c) of this subsection.

(3) "Timber land" means any parcel of land that is five or more acres or multiple parcels of land that are contiguous and total five or more acres which is or are devoted primarily to the growth and harvest of timber for commercial purposes. Timber land means the land only and does not include a residential homesite. The term includes land used for incidental uses that are compatible with the growing and harvesting of timber but no more than ten percent of the land may be used for such incidental uses. It also includes the land on which appurtenances necessary for the production, preparation, or sale of the timber products exist in conjunction with land producing these products.

(4) "Current" or "currently" means as of the date on which property is to be listed and valued by the assessor.

(5) "Owner" means the party or parties having the fee interest in land, except that where land is subject to real estate contract "owner" means the contract vendee.

(6)(a) "Contiguous" means land adjoining and touching other property held by the same ownership. Land divided by a public road, but otherwise an integral part of a farming operation, is considered contiguous.

(b) For purposes of this subsection (6):

(i) "Same ownership" means owned by the same person or persons, except that parcels owned by different persons are deemed held by the same ownership if the parcels are:

(A) Managed as part of a single operation; and

(B) Owned by:

(I) Members of the same family;

(II) Legal entities that are wholly owned by members of the same family; or

(III) An individual who owns at least one of the parcels and a legal entity or entities that own the other parcel or parcels if the entity or entities are wholly owned by that individual, members of his or her family, or that individual and members of his or her family.

(ii) "Family" includes only:

(A) An individual and his or her spouse or domestic partner, child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(B) The spouse or domestic partner of an individual's child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(C) A child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling of the individual's spouse or the individual's domestic partner; and

(D) The spouse or domestic partner of any individual described in (b)(ii)(C) of this subsection (6).

(7) "Granting authority" means the appropriate agency or official who acts on an application for classification of land pursuant to this chapter.

(8) "Farm and agricultural conservation land" means either:

(a) Land that was previously classified under subsection (2) of this section, that no longer meets the criteria of subsection (2) of this section, and that is reclassified under subsection (1) of this section; or

(b) Land that is traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and

that has a high potential for returning to commercial agriculture. [2011 c 101 § 1; 2010 c 106 § 304. Prior: 2009 c 513 § 1; 2009 c 255 § 1; 2005 c 57 § 1; 2004 c 217 § 1; 2002 c 315 § 1; 2001 c 249 § 12; 1998 c 320 § 7; 1997 c 429 § 31; 1992 c 69 § 4; 1988 c 253 § 3; 1983 c 3 § 227; 1973 1st ex.s. c 212 § 2; 1970 ex.s. c 87 § 2.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Purpose—2004 c 217 § 1: "The purpose of the amendatory language in section 1 of this act is to clarify the timber land definition as it relates to tax issues. The language does not affect land use policy or law." [2004 c 217 § 2.]

Additional notes found at www.leg.wa.gov

Chapter 84.36 RCW EXEMPTIONS

Sections

84.36.080	Certain ships and vessels.
84.36.381	Residences—Property tax exemptions—Qualifications.
84.36.385	Residences—Claim for exemption—Forms—Change of status—Publication and notice of qualifications and manner of making claims.

84.36.080 Certain ships and vessels. (1) All ships and vessels which are exempt from excise tax under RCW 82.49.020(2) and excepted from the registration requirements of RCW 88.02.570(10) shall be and are hereby made exempt from all ad valorem taxes, except taxes levied for any state purpose.

(2) All ships and vessels listed in the state or federal register of historical places are exempt from all ad valorem taxes. [2011 c 171 § 126; 2000 c 103 § 24; 1998 c 335 § 5; 1986 c 229 § 1; 1983 2nd ex.s. c 3 § 51; 1983 c 7 § 23; 1961 c 15 § 84.36.080. Prior: 1945 c 82 § 1; 1931 c 81 § 1; Rem. Supp. 1945 § 11111-2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Listing of taxable ships and vessels with department of revenue: RCW 84.40.065.

Valuation of vessels—Apportionment: RCW 84.40.036.

Additional notes found at www.leg.wa.gov

84.36.381 Residences—Property tax exemptions—Qualifications. A person is exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of the time of filing. However, any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant may receive an exemption on more than one residence in any year. Moreover, confinement of the person to a hospital, nursing home, boarding home, or adult family home does not disqualify the claim of exemption if:

(a) The residence is temporarily unoccupied;

(b) The residence is occupied by a spouse or a domestic partner and/or a person financially dependent on the claimant for support; or

(c) The residence is rented for the purpose of paying nursing home, hospital, boarding home, or adult family home costs;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or state registered domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant, and any lease for life is deemed a life estate;

(3)(a) The person claiming the exemption must be:

(i) Sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of disability; or

(ii) A veteran of the armed forces of the United States entitled to and receiving compensation from the United States department of veterans affairs at a total disability rating for a service-connected disability.

(b) However, any surviving spouse or surviving domestic partner of a person who was receiving an exemption at the time of the person's death will qualify if the surviving spouse or surviving domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person is exempt from an obligation to pay is calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the assessment year, the combined disposable income of such person must be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person claiming exemption is reduced for two or more months of the assessment year by reason of the death of the person's spouse or the person's domestic partner, or when other substantial changes occur in disposable income that are likely to continue for an indefinite period of time, the combined disposable income of such person must be calculated by multiplying the average monthly combined disposable income of such person after such occurrences by twelve. If it is necessary to estimate income to comply with this subsection, the assessor may require confirming documentation of such income prior to May 31 of the year following application;

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less is exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of thirty thousand dollars or less but greater than twenty-five thousand dollars is exempt from all regular property taxes on the greater of fifty thousand dollars or thirty-five percent of the valuation of his or her residence, but not to exceed seventy thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of twenty-five thousand dollars or less is exempt from all regular property taxes on the greater of sixty thousand dollars or sixty percent of the valuation of his or her residence;

(6)(a) For a person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less, the valuation of the residence is the assessed value of the residence on the later of January 1, 1995, or January 1st of the assessment year the person first qualifies under this section. If the person subsequently fails to qualify under this section only for one year because of high income, this same valuation must be used upon requalification. If the person fails to qualify for more than one year in succession because of high income or fails to qualify for any other reason, the valuation upon requalification is the assessed value on January 1st of the assessment year in which the person requalifies. If the person transfers the exemption under this section to a different residence, the valuation of the different residence is the assessed value of the different residence on January 1st of the assessment year in which the person transfers the exemption.

(b) In no event may the valuation under this subsection be greater than the true and fair value of the residence on January 1st of the assessment year.

(c) This subsection does not apply to subsequent improvements to the property in the year in which the improvements are made. Subsequent improvements to the property must be added to the value otherwise determined under this subsection at their true and fair value in the year in which they are made. [2011 c 174 § 105; 2010 c 106 § 306; 2008 c 6 § 706; 2005 c 248 § 2; 2004 c 270 § 1; 1998 c 333 § 1; 1996 c 146 § 1; 1995 1st sp.s. c 8 § 1; 1994 sp.s. c 8 § 1; 1993 c 178 § 1; 1992 c 187 § 1. Prior: 1991 c 213 § 3; 1991 c 203 § 1; 1987 c 301 § 1; 1983 1st ex.s. c 11 § 5; 1983 1st ex.s. c 11 § 2; 1980 c 185 § 4; 1979 ex.s. c 214 § 1; 1977 ex.s. c 268 § 1; 1975 1st ex.s. c 291 § 14; 1974 ex.s. c 182 § 1.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Application—2005 c 248: "This act applies to taxes levied for collection in 2006 and thereafter." [2005 c 248 § 3.]

Intent—1983 1st ex.s. c 11: "The legislature finds that inflation has significant detrimental effects on the senior citizen property tax relief program. Inflation increases incomes without increasing real buying power. Inflation also raises the values of homes, and thus the taxes on those homes. This act addresses the problem of inflation in two ways. First, the assessed value exemption is tied to home value so it will increase as values rise. Secondly, though the income of most senior citizens does not keep pace with inflation, it is the legislature's intent that inflationary increases in incomes will not result in program disqualification. Therefore, the income levels are adjusted to reflect the forecasted increase in inflation. The legislature also recommends that similar adjustments be examined by future legislatures." [1983 1st ex.s. c 11 § 1.]

Additional notes found at www.leg.wa.gov

84.36.385 Residences—Claim for exemption—Forms—Change of status—Publication and notice of qualifications and manner of making claims. (1) A claim for exemption under RCW 84.36.381 as now or hereafter amended, may be made and filed at any time during the year for exemption from taxes payable the following year and thereafter and solely upon forms as prescribed and furnished

by the department of revenue. However, an exemption from tax under RCW 84.36.381 continues for no more than six years unless a renewal application is filed as provided in subsection (3) of this section.

(2) A person granted an exemption under RCW 84.36.381 must inform the county assessor of any change in status affecting the person's entitlement to the exemption on forms prescribed and furnished by the department of revenue.

(3) Each person exempt from taxes under RCW 84.36.381 in 1993 and thereafter, must file with the county assessor a renewal application not later than December 31 of the year the assessor notifies such person of the requirement to file the renewal application. Renewal applications must be on forms prescribed and furnished by the department of revenue.

(4) At least once every six years, the county assessor must notify those persons receiving an exemption from taxes under RCW 84.36.381 of the requirement to file a renewal application. The county assessor may also require a renewal application following an amendment of the income requirements set forth in RCW 84.36.381.

(5) If the assessor finds that the applicant does not meet the qualifications as set forth in RCW 84.36.381, as now or hereafter amended, the claim or exemption must be denied but such denial is subject to appeal under the provisions of RCW 84.48.010 and in accordance with the provisions of RCW 84.40.038. If the applicant had received exemption in prior years based on erroneous information, the taxes must be collected subject to penalties as provided in RCW 84.40.130 for a period of not to exceed five years.

(6) The department and each local assessor is hereby directed to publicize the qualifications and manner of making claims under RCW 84.36.381 through 84.36.389, through communications media, including such paid advertisements or notices as it deems appropriate. Notice of the qualifications, method of making applications, the penalties for not reporting a change in status, and availability of further information must be included on or with property tax statements and revaluation notices for all residential property including mobile homes, except rental properties. [2011 c 174 § 106; 2010 c 106 § 308; 2001 c 185 § 8; 1992 c 206 § 13; 1988 c 222 § 10; 1983 1st ex.s. c 11 § 6; 1983 1st ex.s. c 11 § 3; 1979 ex.s. c 214 § 3; 1977 ex.s. c 268 § 2; 1974 ex.s. c 182 § 3.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Application—2001 c 185 §§ 1-12: See note following RCW 84.14.110.

Intent—Applicability—Effective dates—1983 1st ex.s. c 11: See notes following RCW 84.36.381.

Additional notes found at www.leg.wa.gov

Chapter 84.40 RCW LISTING OF PROPERTY

Sections

84.40.038 Petition county board of equalization—Limitation on changes to time limit—Waiver of filing deadline—Direct appeal to state board of tax appeals.

84.40.038 Petition county board of equalization—Limitation on changes to time limit—Waiver of filing deadline—Direct appeal to state board of tax appeals. (1)

The owner or person responsible for payment of taxes on any property may petition the county board of equalization for a change in the assessed valuation placed upon such property by the county assessor or for any other reason specifically authorized by statute. Such petition must be made on forms prescribed or approved by the department of revenue and any petition not conforming to those requirements or not properly completed may not be considered by the board. The petition must be filed with the board on or before July 1st of the year of the assessment or determination, within thirty days after the date an assessment, value change notice, or other notice has been mailed, or within a time limit of up to sixty days adopted by the county legislative authority, whichever is later. If a county legislative authority sets a time limit, the authority may not change the limit for three years from the adoption of the limit.

(2) The board of equalization may waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause for the late filing. However, the board of equalization must waive the filing deadline for the circumstance described under (f) of this subsection if the petition is filed within a reasonable time after the filing deadline. The decision of the board of equalization regarding a waiver of the filing deadline is final and not appealable under RCW 84.08.130. Good cause may be shown by one or more of the following events or circumstances:

(a) Death or serious illness of the taxpayer or his or her immediate family;

(b) The taxpayer was absent from the address where the taxpayer normally receives the assessment or value change notice, was absent for more than fifteen days of the days allowed in subsection (1) of this section before the filing deadline, and the filing deadline is after July 1;

(c) Incorrect written advice regarding filing requirements received from board of equalization staff, county assessor's staff, or staff of the property tax advisor designated under RCW 84.48.140;

(d) Natural disaster such as flood or earthquake;

(e) Delay or loss related to the delivery of the petition by the postal service, and documented by the postal service;

(f) The taxpayer was not sent a revaluation notice under RCW 84.40.045 for the current assessment year and the taxpayer can demonstrate both of the following:

(i) The taxpayer's property value did not change from the previous year; and

(ii) The taxpayer's property is located in an area revalued by the assessor for the current assessment year; or

(g) Other circumstances as the department may provide by rule.

(3) The owner or person responsible for payment of taxes on any property may request that the appeal be heard by the state board of tax appeals without a hearing by the county board of equalization when the assessor, the owner or person responsible for payment of taxes on the property, and a majority of the county board of equalization agree that a direct appeal to the state board of tax appeals is appropriate. The state board of tax appeals may reject the appeal, in which case the county board of equalization must consider the appeal under RCW 84.48.010. Notice of such a rejection, together with the reason therefor, shall be provided to the

affected parties and the county board of equalization within thirty days of receipt of the direct appeal by the state board. [2011 c 84 § 1; 2001 c 185 § 11; 1997 c 294 § 1; 1994 c 123 § 4; 1992 c 206 § 11; 1988 c 222 § 19.]

Application—2011 c 84: "This act applies to taxes levied for collection in 2012 and thereafter." [2011 c 84 § 2.]

Application—2001 c 185 §§ 1-12: See note following RCW 84.14.110.

Additional notes found at www.leg.wa.gov

Chapter 84.52 RCW LEVY OF TAXES

Sections

84.52.010	Taxes levied or voted in specific amounts—Effect of constitutional and statutory limitations. (<i>Effective until January 1, 2018.</i>)
84.52.043	Limitations upon regular property tax levies. (<i>Effective until January 1, 2018.</i>)
84.52.044	Limitations upon regular property tax levies—Participating fire protection jurisdictions.
84.52.069	Emergency medical care and service levies.
84.52.120	Metropolitan park districts—Protection of levy from prorationing—Ballot proposition. (<i>Effective until January 1, 2018.</i>)
84.52.815	Flood control zone district—Coextensive with county—Prorationing protection. (<i>Expires January 1, 2018.</i>)

84.52.010 Taxes levied or voted in specific amounts—Effect of constitutional and statutory limitations. (*Effective until January 1, 2018.*) (1) Except as is permitted under RCW 84.55.050, all taxes must be levied or voted in specific amounts.

(2) The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, must be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county must be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

(3) When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor must recompute and establish a consolidated levy in the following manner:

(a) The full certified rates of tax levy for state, county, county road district, and city or town purposes must be extended on the tax rolls in amounts not exceeding the limitations established by law; however any state levy takes precedence over all other levies and may not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under RCW 36.54.130, 84.34.230, 84.52.069, 84.52.105, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, 84.52.125, 84.52.135, 84.52.140, and the protected portion of the levy under RCW 86.15.160 by flood control zone districts in a county with a population of seven hundred seventy-five thousand or more that are coextensive

with a county, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies must be reduced as follows:

(i) The portion of the levy by a metropolitan park district that has a population of less than one hundred fifty thousand and is located in a county with a population of one million five hundred thousand or more that is protected under RCW 84.52.120 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(ii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the protected portion of the levy imposed under RCW 86.15.160 by a flood control zone district in a county with a population of seven hundred seventy-five thousand or more that is coextensive with a county must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(iii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.140 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(iv) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a fire protection district that is protected under RCW 84.52.125 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(v) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.135 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(vi) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a ferry district under RCW 36.54.130 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(vii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a metropolitan park district with a population of one hundred fifty thousand or more that is protected under RCW 84.52.120 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(viii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, must be reduced on a pro rata basis until the combined rate no

longer exceeds one percent of the true and fair value of any property or must be eliminated; and

(ix) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated.

(b) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property must be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(i) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, 35.95A.100, and 67.38.130 must be reduced on a pro rata basis or eliminated;

(ii) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts other than the portion of a levy protected under RCW 84.52.815 must be reduced on a pro rata basis or eliminated;

(iii) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, regional fire protection service authorities, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, must be reduced on a pro rata basis or eliminated;

(iv) Fourth, if the consolidated tax levy rate still exceeds these limitations, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts created on or after January 1, 2002, must be reduced on a pro rata basis or eliminated;

(v) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 and regional fire protection service authorities under RCW 52.26.140(1) (b) and (c) must be reduced on a pro rata basis or eliminated; and

(vi) Sixth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140(1)(a), library districts, metropolitan park districts created before January 1, 2002, under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, must be reduced on a pro rata basis or eliminated. [2011 1st sp.s. c 28 § 2; 2011 c 275 § 1; 2009 c 551 § 7; 2007 c 54 § 26; 2005 c 122 § 2. Prior: 2004 c 129 § 21; 2004 c 80 § 3; 2003 c 83 § 310; prior: 2002 c 248 § 15; 2002 c 88 § 7; 1995 2nd sp.s. c 13 § 4; 1995 c 99 § 2; 1994 c 124 § 36; 1993 c 337 § 4; 1990 c 234 § 4; 1988 c 274 § 7; 1987 c 255 § 1; 1973 1st ex.s. c 195 § 101; 1973 1st ex.s. c 195 § 146; 1971 ex.s. c 243 § 6; 1970 ex.s. c 92 § 4; 1961 c 15 § 84.52.010; prior: 1947 c 270 § 1; 1925 ex.s. c 130 § 74;

Rem. Supp. 1947 § 11235; prior: 1920 ex.s. c 3 § 1; 1897 c 71 § 62; 1893 c 124 § 63.]

Contingent effective date—2011 1st sp.s. c 28 § 2: "(1) Section 1 of this act takes effect if section 1, chapter 275, Laws of 2011 is not enacted into law.

(2) Section 2 of this act takes effect if section 1, chapter 275, Laws of 2011 is enacted into law." [2011 1st sp.s. c 28 § 6.]

Application—2011 1st sp.s. c 28: "This act applies to taxes levied for collection in 2012 through 2017." [2011 1st sp.s. c 28 § 5.]

Expiration date—2011 1st sp.s. c 28: "This act expires January 1, 2018." [2011 1st sp.s. c 28 § 7.]

Application—Expiration date—2011 c 275: See notes following RCW 84.52.043.

Severability—2007 c 54: See note following RCW 82.04.050.

Application—2005 c 122: See note following RCW 84.52.125.

Captions not law—Severability—2004 c 129: See RCW 52.26.900 and 52.26.901.

Effective date—2004 c 80: See note following RCW 84.52.135.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Intent—1995 2nd sp.s. c 13: See note following RCW 84.48.080.

Finding—1993 c 337: See note following RCW 84.52.105.

Purpose—1988 c 274: "The legislature finds that, due to statutory and constitutional limitations, the interdependence of the regular property tax levies of the state, counties, county road districts, cities and towns, and junior taxing districts can cause significant reductions in the otherwise authorized levies of those taxing districts, resulting in serious disruptions to essential services provided by those taxing districts. The purpose of this act is to avoid unnecessary reductions in regular property tax revenue without exceeding existing statutory and constitutional tax limitations on cumulative regular property tax levy rates. The legislature declares that it is a purpose of the state, counties, county road districts, cities and towns, public hospital districts, library districts, fire protection districts, metropolitan park districts, and other taxing districts to participate in the methods provided by this act by which revenue levels supporting the services provided by all taxing districts might be maintained." [1988 c 274 § 1.]

Intent—1970 ex.s. c 92: "It is the intent of this 1970 amendatory act to prevent a potential doubling of property taxes that might otherwise result from the enforcement of the constitutionally required fifty percent assessment ratio as of January 1, 1970, and to adjust property tax millage rates for subsequent years to levels which will conform to the requirements of any constitutional amendment imposing a one percent limitation on property taxes. It is the further intent of this 1970 amendatory act that the statutory authority of any taxing district to impose excess levies shall not be impaired by reason of the reduction in millage rates for regular property tax levies. This 1970 amendatory act shall be construed to effectuate the legislative intent expressed in this section." [1970 ex.s. c 92 § 1.]

Additional notes found at www.leg.wa.gov

84.52.043 Limitations upon regular property tax levies. (Effective until January 1, 2018.) Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named are as follows:

(1) Levies of the senior taxing districts are as follows:

(a) The levy by the state may not exceed three dollars and sixty cents per thousand dollars of assessed value adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; (b) the levy by any county may not exceed one dollar and eighty cents per thousand dollars of assessed value; (c) the levy by any road district may not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and (d) the levy by any city or town may not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed

value. However any county is hereby authorized to increase its levy from one dollar and eighty cents to a rate not to exceed two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes if the total levies for both the county and any road district within the county do not exceed four dollars and five cents per thousand dollars of assessed value, and no other taxing district has its levy reduced as a result of the increased county levy.

(2) The aggregate levies of junior taxing districts and senior taxing districts, other than the state, may not exceed five dollars and ninety cents per thousand dollars of assessed valuation. The term "junior taxing districts" includes all taxing districts other than the state, counties, road districts, cities, towns, port districts, and public utility districts. The limitations provided in this subsection do not apply to: (a) Levies at the rates provided by existing law by or for any port or public utility district; (b) excess property tax levies authorized in Article VII, section 2 of the state Constitution; (c) levies for acquiring conservation futures as authorized under RCW 84.34.230; (d) levies for emergency medical care or emergency medical services imposed under RCW 84.52.069; (e) levies to finance affordable housing for very low-income housing imposed under RCW 84.52.105; (f) the portions of levies by metropolitan park districts that are protected under RCW 84.52.120; (g) levies imposed by ferry districts under RCW 36.54.130; (h) levies for criminal justice purposes under RCW 84.52.135; (i) the portions of levies by fire protection districts that are protected under RCW 84.52.125; (j) levies by counties for transit-related purposes under RCW 84.52.140; and (k) the protected portion of the levies imposed under RCW 86.15.160 by flood control zone districts in a county with a population of seven hundred seventy-five thousand or more that are coextensive with a county. [2011 c 275 § 2; 2009 c 551 § 6; 2005 c 122 § 3; 2004 c 80 § 4; 2003 c 83 § 311; 1995 c 99 § 3; 1993 c 337 § 3; 1990 c 234 § 1; 1989 c 378 § 36; 1988 c 274 § 5; 1973 1st ex.s. c 195 § 134.]

Application—2011 c 275: "This act applies to taxes levied for collection in 2012 through 2017." [2011 c 275 § 4.]

Expiration date—2011 c 275: "This act expires January 1, 2018." [2011 c 275 § 5.]

Application—2005 c 122: See note following RCW 84.52.125.

Effective date—2004 c 80: See note following RCW 84.52.135.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Finding—1993 c 337: See note following RCW 84.52.105.

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

Additional notes found at www.leg.wa.gov

84.52.044 Limitations upon regular property tax levies—Participating fire protection jurisdictions. (1) If a fire protection district is a participating fire protection jurisdiction in a regional fire protection service authority, the regular property tax levies of the fire protection district are limited as follows:

(a) The regular levy of the district under RCW 52.16.130 shall not exceed fifty cents per thousand dollars of assessed value of taxable property in the district less the amount of any levy imposed by the authority under RCW 52.26.140(1)(a);

(b) The levy of the district under RCW 52.16.140 shall not exceed fifty cents per thousand dollars of assessed value of taxable property in the district less the amount of any levy imposed by the authority under RCW 52.26.140(1)(b); and

(c) The levy of the district under RCW 52.16.160 shall not exceed fifty cents per thousand dollars of assessed value of taxable property in the district less the amount of any levy imposed by the authority under RCW 52.26.140(1)(c).

(2) If a city or town is a participating fire protection jurisdiction in a regional fire protection service authority, the regular levies of the city or town shall not exceed the applicable rates provided in RCW 27.12.390, 52.04.081, and 84.52.043(1) less the aggregate rates of any regular levies made by the authority under RCW 52.26.140(1).

(3) If a port district is a participating fire protection jurisdiction in a regional fire protection service authority, the regular levy of the port district under RCW 53.36.020 shall not exceed forty-five cents per thousand dollars of assessed value of taxable property in the district less the aggregate rates of any regular levies imposed by the authority under RCW 52.26.140(1).

(4) For purposes of this section, the following definitions apply:

(a) "Fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district; and

(b) "Participating fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district that is represented on the governing board of a regional fire protection service authority or annexed into a regional fire protection service authority. [2011 c 271 § 3; 2011 c 141 § 4; 2004 c 129 § 20.]

Captions not law—Severability—2004 c 129: See RCW 52.26.900 and 52.26.901.

84.52.069 Emergency medical care and service levies.

(1) As used in this section, "taxing district" means a county, emergency medical service district, city or town, public hospital district, urban emergency medical service district, regional fire protection service authority, or fire protection district.

(2) Except as provided in subsection (10) of this section, a taxing district may impose additional regular property tax levies in an amount equal to fifty cents or less per thousand dollars of the assessed value of property in the taxing district. The tax shall be imposed (a) each year for six consecutive years, (b) each year for ten consecutive years, or (c) permanently. A tax levy under this section must be specifically authorized by a majority of at least three-fifths of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percent of the total number of voters voting in such taxing district at the last preceding general election when the number of registered voters voting on the proposition does not exceed forty percent of the total number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters thereof voting on the proposition when the number of registered voters voting on the proposition exceeds forty percent of the total number of voters voting in such taxing district in

the last preceding general election. Ballot propositions must conform with RCW 29A.36.210. A taxing district may not submit to the voters at the same election multiple propositions to impose a levy under this section.

(3) A taxing district imposing a permanent levy under this section shall provide for separate accounting of expenditures of the revenues generated by the levy. The taxing district must maintain a statement of the accounting which must be updated at least every two years and must be available to the public upon request at no charge.

(4)(a) A taxing district imposing a permanent levy under this section must provide for a referendum procedure to apply to the ordinance or resolution imposing the tax. This referendum procedure must specify that a referendum petition may be filed at any time with a filing officer, as identified in the ordinance or resolution. Within ten days, the filing officer must confer with the petitioner concerning form and style of the petition, issue the petition an identification number, and secure an accurate, concise, and positive ballot title from the designated local official. The petitioner has thirty days in which to secure the signatures of not less than fifteen percent of the registered voters of the taxing district, as of the last general election, upon petition forms which contain the ballot title and the full text of the measure to be referred. The filing officer must verify the sufficiency of the signatures on the petition and, if sufficient valid signatures are properly submitted, must certify the referendum measure to the next election within the taxing district if one is to be held within one hundred eighty days from the date of filing of the referendum petition, or at a special election to be called for that purpose in accordance with RCW 29A.04.330.

(b) The referendum procedure provided in this subsection (4) is exclusive in all instances for any taxing district imposing the tax under this section and supersedes the procedures provided under all other statutory or charter provisions for initiative or referendum which might otherwise apply.

(5) Any tax imposed under this section may be used only for the provision of emergency medical care or emergency medical services, including related personnel costs, training for such personnel, and related equipment, supplies, vehicles and structures needed for the provision of emergency medical care or emergency medical services.

(6) If a county levies a tax under this section, no taxing district within the county may levy a tax under this section. If a regional fire protection service authority imposes a tax under this section, no other taxing district that is a participating fire protection jurisdiction in the regional fire protection service authority may levy a tax under this section. No other taxing district may levy a tax under this section if another taxing district has levied a tax under this section within its boundaries: PROVIDED, That if a county levies less than fifty cents per thousand dollars of the assessed value of property, then any other taxing district may levy a tax under this section equal to the difference between the rate of the levy by the county and fifty cents: PROVIDED FURTHER, That if a taxing district within a county levies this tax, and the voters of the county subsequently approve a levying of this tax, then the amount of the taxing district levy within the county must be reduced, when the combined levies exceed fifty cents. Whenever a tax is levied countywide, the service must, insofar as is feasible, be provided throughout the county: PRO-

VIDED FURTHER, That no countywide levy proposal may be placed on the ballot without the approval of the legislative authority of each city exceeding fifty thousand population within the county: AND PROVIDED FURTHER, That this section and RCW 36.32.480 shall not prohibit any city or town from levying an annual excess levy to fund emergency medical services: AND PROVIDED, FURTHER, That if a county proposes to impose tax levies under this section, no other ballot proposition authorizing tax levies under this section by another taxing district in the county may be placed before the voters at the same election at which the county ballot proposition is placed: AND PROVIDED FURTHER, That any taxing district emergency medical service levy that is limited in duration and that is authorized subsequent to a county emergency medical service levy that is limited in duration, expires concurrently with the county emergency medical service levy. A fire protection district that has annexed an area described in subsection (10) of this section may levy the maximum amount of tax that would otherwise be allowed, notwithstanding any limitations in this subsection (6).

(7) The limitations in RCW 84.52.043 do not apply to the tax levy authorized in this section.

(8) If a ballot proposition approved under subsection (2) of this section did not impose the maximum allowable levy amount authorized for the taxing district under this section, any future increase up to the maximum allowable levy amount must be specifically authorized by the voters in accordance with subsection (2) of this section at a general or special election.

(9) The limitation in RCW 84.55.010 does not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section.

(10) For purposes of imposing the tax authorized under this section, the boundary of a county with a population greater than one million five hundred thousand does not include all of the area of the county that is located within a city that has a boundary in two counties, if the locally assessed value of all the property in the area of the city within the county having a population greater than one million five hundred thousand is less than two hundred fifty million dollars.

(11) For purposes of this section, the following definitions apply:

(a) "Fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district; and

(b) "Participating fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district that is represented on the governing board of a regional fire protection service authority. [2011 c 365 § 2; 2004 c 129 § 23; 1999 c 224 § 1; 1995 c 318 § 9; 1994 c 79 § 2; 1993 c 337 § 5; 1991 c 175 § 1; 1985 c 348 § 1; 1984 c 131 § 5; 1979 ex.s. c 200 § 1.]

Findings—Intent—2011 c 365: "(1) The legislature finds that King county currently imposes an emergency medical services levy throughout the entire county. The legislature further finds that the city of Milton is located partially within King and Pierce counties and the residents of Milton within King county pay the county emergency medical services levy. The legislature further finds that King county, through an interlocal agreement with the city of Milton, has not provided emergency medical services to the city for many years and instead has remitted the county emergency medical

services levy collected within the city back to the city. The legislature further finds that the city of Milton has collected only twenty cents per thousand dollars of assessed valuation under its city emergency medical services levy, and not the full fifty cents authorized by the city's voters, because state law limits the city's levy, as well as any other taxing district's emergency medical services levy, if the county also imposes the tax. The legislature further finds that the city of Milton is exploring the possibility of being annexed by a fire protection district located in Pierce county; however, if the district annexes the entire city, including the portion in King county, the district would have to lower its emergency medical services levy as required under state law.

(2) It is the intent of the legislature to address this unusual situation by excluding the portion of the city of Milton within King county from the county emergency medical services levy. It is the further intent of the legislature to clarify that a fire protection district is able to levy the full amount of emergency medical services levy otherwise allowed by law throughout the entire city." [2011 c 365 § 1.]

Application—2011 c 365: "This act applies to taxes levied for collection in 2012 and thereafter." [2011 c 365 § 3.]

Captions not law—Severability—2004 c 129: See RCW 52.26.900 and 52.26.901.

Finding—1993 c 337: See note following RCW 84.52.105.

Purpose—1984 c 131 §§ 3-9: See note following RCW 29A.36.210.

Additional notes found at www.leg.wa.gov

84.52.120 Metropolitan park districts—Protection of levy from prorationing—Ballot proposition. (Effective until January 1, 2018.) A metropolitan park district with a population of one hundred fifty thousand or more, or any metropolitan park district located in a county with a population of one million five hundred thousand or more, may submit a ballot proposition to voters of the district authorizing the protection of the district's tax levy from prorationing under RCW 84.52.010(3)(b) by imposing all or any portion of the district's twenty-five cent per thousand dollars of assessed valuation tax levy outside of the five dollar and ninety cent per thousand dollar of assessed valuation limitation established under RCW 84.52.043(2), if those taxes otherwise would be prorated under RCW 84.52.010(3)(b)(iii), for taxes imposed in any year on or before the first day of January six years after the ballot proposition is approved. A simple majority vote of voters voting on the proposition is required for approval. [2011 1st sp.s. c 28 § 3; 1995 c 99 § 1.]

Application—Expiration date—2011 1st sp.s. c 28: See notes following RCW 84.52.010.

84.52.815 Flood control zone district—Coextensive with county—Prorationing protection. (Expires January 1, 2018.) A flood control zone district in a county with a population of seven hundred seventy-five thousand or more that is coextensive with a county may protect the levy under RCW 86.15.160(1) from prorationing under RCW 84.52.010(3)(b)(ii) by imposing up to a total of twenty-five cents per thousand dollars of assessed value of the tax levy authorized under RCW 86.15.160 outside of the five dollars and ninety cents per thousand dollars of assessed value limitation under RCW 84.52.043(2), if those taxes otherwise would be prorated under RCW 84.52.010(3)(b)(ii). [2011 1st sp.s. c 28 § 4; 2011 c 275 § 3.]

Application—Expiration date—2011 1st sp.s. c 28: See notes following RCW 84.52.010.

Application—Expiration date—2011 c 275: See notes following RCW 84.52.043.

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Title 85

DIKING AND DRAINAGE

Chapters

85.38 Special district creation and operation.

Chapter 85.38 RCW

SPECIAL DISTRICT CREATION AND OPERATION

Sections

85.38.125 Elections—Auditor to conduct.

85.38.125 Elections—Auditor to conduct. (1) If a special district has less than five hundred qualified voters, then the special district must contract with the county auditor to conduct the special district elections.

(2) If a special district has at least five hundred qualified voters, the special district may contract with the county auditor to conduct the election. A special district with at least five hundred qualified voters may also choose to conduct its own elections. A special district that conducts its own elections must enter into an agreement with the county auditor that specifies the responsibilities of both parties. [2011 c 10 § 83; 1991 c 349 § 15.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Title 86

FLOOD CONTROL

Chapters

86.09 Flood control districts—1937 act.

86.15 Flood control zone districts.

86.26 State participation in flood control maintenance.

Chapter 86.09 RCW

FLOOD CONTROL DISTRICTS—1937 ACT

Sections

86.09.720 Cooperative watershed management.

86.09.720 Cooperative watershed management. In addition to the authority provided in this chapter, flood control districts may participate in and expend revenue on cooperative watershed management arrangements and actions, including without limitation those under chapter 39.34 RCW, under chapter 39.106 RCW, and under other intergovernmental agreements authorized by law, for purposes of water supply, water quality, and water resource and habitat protection and management. [2011 c 258 § 15; 2003 c 327 § 18.]

Short title—Purpose—Intent—2011 c 258: See RCW 39.106.010.

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

Chapter 86.15 RCW

FLOOD CONTROL ZONE DISTRICTS

Sections

86.15.035 Cooperative watershed management.

86.15.035 Cooperative watershed management. In addition to the authority provided in this chapter, flood control zone districts may participate in and expend revenue on cooperative watershed management arrangements and actions, including without limitation those under chapter 39.34 RCW, under chapter 39.106 RCW, and under other intergovernmental agreements authorized by law, for purposes of water supply, water quality, and water resource and habitat protection and management. [2011 c 258 § 16; 2003 c 327 § 19.]

Short title—Purpose—Intent—2011 c 258: See RCW 39.106.010.

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

Chapter 86.26 RCW

STATE PARTICIPATION IN FLOOD CONTROL MAINTENANCE

Sections

86.26.007 Flood control assistance account—Use.

86.26.007 Flood control assistance account—Use. The flood control assistance account is hereby established in the state treasury. At the beginning of the 2005-2007 fiscal biennium, the state treasurer shall transfer three million dollars from the general fund to the flood control assistance account. Each biennium thereafter the state treasurer shall transfer four million dollars from the general fund to the flood control assistance account, except that during the 2009-2011 and 2011-2013 fiscal biennia, the state treasurer shall transfer two million dollars from the general fund to the flood control assistance account. Moneys in the flood control assistance account may be spent only after appropriation for purposes specified under this chapter. [2011 1st sp.s. c 50 § 976; 2009 c 564 § 961; 2005 c 518 § 947; 2003 1st sp.s. c 25 § 943; 1997 c 149 § 914; 1996 c 283 § 903; 1995 2nd sp.s. c 18 § 915; 1993 sp.s. c 24 § 928; 1991 sp.s. c 13 § 24; 1986 c 46 § 1; 1985 c 57 § 88; 1984 c 212 § 1.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Additional notes found at www.leg.wa.gov

Title 87

IRRIGATION

Chapters

87.03 Irrigation districts generally.

Chapter 87.03 RCW

IRRIGATION DISTRICTS GENERALLY

Sections

87.03.136 Sale or lease of district real property.

87.03.136 Sale or lease of district real property. An irrigation district has the power to sell or lease real property owned by the district whenever its board of directors, by resolution: Determines that the property is not necessary or needed for the use of the district; and authorizes the sale or lease. Notice of the district's intention to sell or lease the property shall be made by publication at least twenty days before the transaction is executed regarding the property in a newspaper of general circulation in the county where the property or part of the property is located or, if there is no such newspaper in the county, in a newspaper of general circulation published in an adjoining county. The publication shall be made at least once a week during three consecutive weeks. The notice shall state whether the sale or lease will be negotiated by the district or will be awarded by bid.

The district may lease the property for a duration determined by the board, afford the lessee the option to purchase the property, sell the property on contract for deferred payments, sell the property pursuant to a promissory note secured by a mortgage or deed of trust, or sell the property for cash and conveyance by deed. The appropriate documents shall be executed by the president of the board and acknowledged by the secretary.

The resolution authorizing the sale or lease shall be entered in the minutes of the board and shall fix the price at which the lease, option, or sale may be made. The price shall be not less than the reasonable market value of the property; however, the board may, without consideration, dedicate, grant, or convey district land or easements in district land for highway or public utility purposes that convenience the inhabitants of the district if the board deems that the action will enhance the value of the remaining district land to an extent equal to or greater than the value of the land or easement dedicated, granted, or conveyed. [2011 c 50 § 1; 1994 c 117 § 2.]

Title 88

NAVIGATION AND HARBOR IMPROVEMENTS

Chapters

88.02 Vessel registration.

88.08 Specific acts prohibited.

88.46 Vessel oil spill prevention and response.

Chapter 88.02 RCW

VESSEL REGISTRATION

Sections

88.02.530 Duplicate certificates of title.

88.02.540 Quick title—Application requirements—Subagents. (*Effective January 1, 2012.*)

88.02.560 Application—Form and contents—Registration number and decal—Renewals—Marine oil refuse dump and holding tank information—Transfer. (*Effective until June 30, 2012.*)

88.02.560 Application—Form and contents—Registration number and decal—Renewals—Marine oil refuse dump and holding tank information—Transfer. (*Effective June 30, 2012.*)

88.02.590 Duplicate registration certificates.

88.02.595 Replacement decals.

88.02.610 Vessel visitor permit.

88.02.620 Nonresident vessel permit.

- 88.02.640 Fees by type—Disposition, distribution (*as amended by 2011 c 169*).
- 88.02.640 Fees by type—Disposition, distribution (*as amended by 2011 c 171*).
- 88.02.640 Fees by type—Disposition, distribution (*as amended by 2011 c 326*). (*Effective January 1, 2012.*)
- 88.02.650 Deposit of fees in general fund—Allocation for boating safety and education and law enforcement purposes.
- 88.02.655 Repealed.

88.02.530 Duplicate certificates of title. (1) A legal owner or the legal owner's authorized representative shall promptly apply for a duplicate certificate of title if a certificate of title is lost, stolen, mutilated, or destroyed, or becomes illegible. The application for a duplicate certificate of title must:

- (a) Include information required by the department;
- (b) Be accompanied by an affidavit of loss or destruction;
- (c) Be accompanied by the fee required in RCW 88.02.640(1)(k).

(2) The duplicate certificate of title must contain the word "duplicate." It must be mailed to the first priority secured party named in it or, if none, to the registered owner.

(3) A person recovering a certificate of title for which a duplicate has been issued shall promptly return the certificate of title that has been recovered to the department. [2011 c 171 § 127; 2010 c 161 § 1015; 1997 c 241 § 12; 1986 c 71 § 1. Formerly RCW 88.02.075.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.540 Quick title—Application requirements—Subagents. (*Effective January 1, 2012.*) (1) The application for a quick title of a vessel must be made by the owner or the owner's representative to the department, participating county auditor or other agent, or subagent appointed by the director on a form furnished or approved by the department and must contain:

- (a) A description of the vessel, including make, model, hull identification number, series, and body;
- (b) The name and address of the person who is to be the registered owner of the vessel and, if the vessel is subject to a security interest, the name and address of the secured party; and
- (c) Other information as may be required by the department.

(2) The application for a quick title must be signed by the person applying to be the registered owner and be sworn to by that person in the manner described under RCW 9A.72.085. The department must keep a copy of the application.

(3) The application for a quick title must be accompanied by:

- (a) All fees and taxes due for an application for a certificate of title, including a quick title service fee under RCW 88.02.640(1); and
- (b) The most recent certificate of title or other satisfactory evidence of ownership.

(4) All applications for quick title must meet the requirements established by the department.

(5) For the purposes of this section, "quick title" means a certificate of title printed at the time of application.

(6) A subagent may process a quick title under this section only after (a) the department has instituted a process in which blank certificates of title can be inventoried; (b) the county auditor of the county in which the subagent is located has processed quick titles for a minimum of six months; and (c) the county auditor approves a request from a subagent in its county to process quick titles. [2011 c 326 § 4.]

Application—Effective date—2011 c 326: See notes following RCW 46.12.555.

88.02.560 Application—Form and contents—Registration number and decal—Renewals—Marine oil refuse dump and holding tank information—Transfer. (*Effective until June 30, 2012.*) (1) An application for vessel registration must be made by the owner or the owner's authorized representative to the department, county auditor or other agent, or subagent appointed by the director on a form furnished or approved by the department. The application must contain:

- (a) The name and address of each owner of the vessel;
- (b) Other information the department may require; and
- (c) The signature of at least one owner.

(2) The application for vessel registration must be accompanied by the:

- (a) Vessel registration fee required under RCW 88.02.640(1)(i);
- (b) Derelict vessel and invasive species removal fee under RCW 88.02.640(3)(a) and derelict vessel removal surcharge required under RCW 88.02.640(4);
- (c) Filing fee required under RCW 88.02.640(1)(e);
- (d) License plate technology fee required under RCW 88.02.640(1)(f);
- (e) License service fee required under RCW 88.02.640(1)(g); and
- (f) Watercraft excise tax required under chapter 82.49 RCW.

(3) Upon receipt of an application for vessel registration and the required fees and taxes, the department shall assign a registration number and issue a decal for the vessel. The registration number and decal must be issued and affixed to the vessel in a manner prescribed by the department consistent with the standard numbering system for vessels required in 33 C.F.R. Part 174. A valid decal affixed as prescribed shall indicate compliance with the annual registration requirements of this chapter.

(4) Vessel registrations and decals are valid for a period of one year, except that the director may extend or diminish vessel registration periods and vessel decals for the purpose of staggered renewal periods. For registration periods of more or less than one year, the department may collect prorated annual registration fees and excise taxes based upon the number of months in the registration period.

(5) Vessel registrations are renewable every year in a manner prescribed by the department upon payment of the fees and taxes described in subsection (2) of this section. Upon renewing a vessel registration, the department shall

issue a new decal to be affixed as prescribed by the department.

(6) When the department issues either a notice to renew a vessel registration or a decal for a new or renewed vessel registration, it shall also provide information on the location of marine oil recycling tanks and sewage holding tank pumping stations. This information will be provided to the department by the state parks and recreation commission in a form ready for distribution. The form must be developed and prepared by the state parks and recreation commission with the cooperation of the department of ecology. The department, the state parks and recreation commission, and the department of ecology shall enter into a memorandum of agreement to implement this process.

(7) A person acquiring a vessel from a dealer or a vessel already validly registered under this chapter shall, within fifteen days of the acquisition or purchase of the vessel, apply to the department, county auditor or other agent, or subagent appointed by the director for transfer of the vessel registration, and the application must be accompanied by a transfer fee as required in RCW 88.02.640(1)(l). [2011 c 171 § 128; 2010 c 161 § 1019; 2007 c 342 § 5; 2005 c 464 § 2; 2002 c 286 § 13; 1993 c 244 § 38; 1989 c 17 § 1; 1983 2nd ex.s. c 3 § 45; 1983 c 7 § 18. Formerly RCW 88.02.050.]

Expiration date—2011 c 171 § 128: "Section 128 of this act expires June 30, 2012." [2011 c 171 § 140.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Expiration date—2010 c 161 § 1019: "Section 1019 of this act expires June 30, 2012." [2010 c 161 § 1240.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Expiration date—2007 c 342 § 5: "Section 5 of this act expires June 30, 2012." [2007 c 342 § 9.]

Findings—Intent—2005 c 464: "The legislature finds that aquatic invasive species and freshwater aquatic algae are causing economic, environmental, and public health problems that affect the citizens and aquatic resources of our state. Many highly destructive species, such as the zebra mussel, are currently not found in Washington's waters and efforts should be made to prevent the introduction or spread of these aquatic invasive species into our state waters. Preventing new introductions is significantly less expensive and causes far less ecological damage than trying to control new infestations.

The legislature also finds that freshwater algae, particularly blue-green algae, are also seriously degrading the water quality and recreational value of a number of our lakes. Blue-green algae can produce toxins that inhibit recreational uses and pose a threat to humans and pets.

It is therefore the intent of the legislature to clarify the roles of the different state agencies involved in these issues in order to address the threat of aquatic invasive species and the problem caused by aquatic freshwater algae, and to provide a dedicated fund source to prevent and control further impacts." [2005 c 464 § 1.]

Application—2005 c 464 § 2: "Section 2 of this act applies to vessel registration fees that are due or become due on or after August 1, 2005." [2005 c 464 § 6.]

Expiration date—2005 c 464 § 2: "Section 2 of this act expires June 30, 2012." [2005 c 464 § 7.]

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

Intent—1993 c 244: See note following RCW 79A.60.010.

Additional notes found at www.leg.wa.gov

88.02.560 Application—Form and contents—Registration number and decal—Renewals—Marine oil refuse

dump and holding tank information—Transfer. (*Effective June 30, 2012.*) (1) An application for a vessel registration must be made by the owner or the owner's authorized representative to the department, county auditor or other agent, or subagent appointed by the director on a form furnished or approved by the department. The application must contain:

- (a) The name and address of each owner of the vessel;
- (b) Other information the department may require; and
- (c) The signature of at least one owner.

(2) The application for vessel registration must be accompanied by the:

- (a) Vessel registration fee required under RCW 88.02.640(1)(i);
- (b) Derelict vessel and invasive species removal fee under RCW 88.02.640(3)(b) and derelict vessel removal surcharge required under RCW 88.02.640(4);
- (c) Filing fee required under RCW 88.02.640(1)(e);
- (d) License plate technology fee required under RCW 88.02.640(1)(f);
- (e) License service fee required under RCW 88.02.640(1)(g); and
- (f) Watercraft excise tax required under chapter 82.49 RCW.

(3) Upon receipt of an application for vessel registration and the required fees and taxes, the department shall assign a registration number and issue a decal for each vessel. The registration number and decal must be issued and affixed to the vessel in a manner prescribed by the department consistent with the standard numbering system for vessels required in 33 C.F.R. Part 174. A valid decal affixed as prescribed must indicate compliance with the annual registration requirements of this chapter.

(4) Vessel registrations and decals are valid for a period of one year, except that the director may extend or diminish vessel registration periods and vessel decals for the purpose of staggered renewal periods. For registration periods of more or less than one year, the department may collect prorated annual registration fees and excise taxes based upon the number of months in the registration period.

(5) Vessel registrations are renewable every year in a manner prescribed by the department upon payment of the fees and taxes described in subsection (2) of this section. Upon renewing a vessel registration, the department shall issue a new decal to be affixed as prescribed by the department.

(6) When the department issues either a notice to renew a vessel registration or a decal for a new or renewed vessel registration, it shall also provide information on the location of marine oil recycling tanks and sewage holding tank pumping stations. This information must be provided to the department by the state parks and recreation commission in a form ready for distribution. The form must be developed and prepared by the state parks and recreation commission with the cooperation of the department of ecology. The department, the state parks and recreation commission, and the department of ecology shall enter into a memorandum of agreement to implement this process.

(7) A person acquiring a vessel from a dealer or a vessel already validly registered under this chapter shall, within fifteen days of the acquisition or purchase of the vessel, apply to

the department, county auditor or other agent, or subagent appointed by the director for transfer of the vessel registration, and the application must be accompanied by a transfer fee as required in RCW 88.02.640(1)(l). [2011 c 171 § 129; 2010 c 161 § 1020; 2007 c 342 § 6; 2002 c 286 § 13; 1993 c 244 § 38; 1989 c 17 § 1; 1983 2nd ex.s. c 3 § 45; 1983 c 7 § 18. Formerly RCW 88.02.050.]

Effective date—2011 c 171 § 129: "Section 129 of this act takes effect June 30, 2012." [2011 c 171 § 141.]

Intent—2011 c 171: See note following RCW 4.24.210.

Effective date—2010 c 161 § 1020: "Section 1020 of this act takes effect June 30, 2012." [2010 c 161 § 1239.]

Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective date—2007 c 342 § 6: "Section 6 of this act takes effect June 30, 2012." [2007 c 342 § 10.]

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

Intent—1993 c 244: See note following RCW 79A.60.010.

Additional notes found at www.leg.wa.gov

88.02.590 Duplicate registration certificates. (1) A registered owner or the registered owner's authorized representative shall promptly apply for a duplicate registration certificate when a registration certificate is lost, stolen, mutilated, or destroyed, or becomes illegible. The application for a duplicate registration certificate must:

(a) Be accompanied by an affidavit of loss or destruction;

(b) Include information required by the department; and

(c) Be accompanied by the fee required in RCW 88.02.640(1)(d), in addition to any other fees or taxes required for the transaction.

(2) A person recovering a registration certificate for which a duplicate has been issued shall promptly return the registration certificate that has been recovered to the department. [2011 c 171 § 130; 2010 c 161 § 1021.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.595 Replacement decals. (1) A registered owner or the registered owner's authorized representative shall promptly apply for a pair of replacement decals when the decals are lost, stolen, mutilated, or destroyed, or become illegible. The application for replacement decals must:

(a) Be accompanied by an affidavit of loss or destruction;

(b) Include information required by the department;

(c) Be accompanied by the fee required in RCW 88.02.640(1)(j), in addition to any other fees or taxes required for the transaction.

(2) A person recovering decals for which a replacement has been issued shall promptly return the decals that have been recovered to the department. [2011 c 171 § 131; 2010 c 161 § 1022.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

[2011 RCW Supp—page 1652]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.610 Vessel visitor permit. (1) A vessel owner shall apply for a vessel visitor permit if the vessel is:

(a) Currently registered or numbered under the laws of a country other than the United States or has a valid United States customs service cruising license issued under 19 C.F.R. Sec. 4.94; and

(b) Being used on Washington state waters for the personal use of the owner for more than sixty days.

(2) A vessel visitor permit:

(a) May be obtained from the department, county auditor or other agent, or subagent appointed by the director;

(b) Must show the date the vessel first came into Washington state; and

(c) Is valid as long as the vessel remains currently registered or numbered under the laws of a country other than the United States or the United States customs service cruising license remains valid.

(3) The department, county auditor or other agent, or subagent appointed by the director shall collect the fee required in RCW 88.02.640(1)(m) when issuing a vessel visitor permit.

(4) The department shall adopt rules to implement this section, including rules on issuing and displaying the vessel visitor permit. [2011 c 171 § 132; 2010 c 161 § 1026.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.620 Nonresident vessel permit. (1) A vessel owner who is a nonresident natural person shall apply for a nonresident vessel permit on or before the sixty-first day of use in Washington state if the vessel:

(a) Is currently registered or numbered under the laws of the state of principal operation or has been issued a valid number under federal law; and

(b) Has been brought into Washington state for personal use for not more than six months in any continuous twelve-month period.

(2) A nonresident vessel permit:

(a) May be obtained from the department, county auditor or other agent, or subagent appointed by the director;

(b) Must show the date the vessel first came into Washington state; and

(c) Is valid for two months.

(3) The department, county auditor or other agent, or subagent appointed by the director shall collect the fee required in RCW 88.02.640(1)(h) when issuing nonresident vessel permits.

(4) A nonresident vessel permit is not required under this section if the vessel is used in conducting temporary business activity within Washington state.

(5) The department shall adopt rules to implement this section, including rules on issuing and displaying the nonresident vessel permit. [2011 c 171 § 133; 2010 c 161 § 1027.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.640 Fees by type—Disposition, distribution (as amended by 2011 c 169). (1) In addition to any other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge the following vessel fees:

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(a) Dealer temporary permit	\$5.00	RCW 88.02.800(2)	General fund
(b) Derelict vessel and invasive species removal	Subsection (3) of this section	Subsections (3) and (4) of this section	Subsection (3) of this section
(c) Duplicate registration	\$1.25	RCW 88.02.590(1)(c)	General fund
(d) Filing	RCW 46.17.005	RCW 46.17.005	RCW 46.68.440
(e) License plate technology	RCW 46.17.015	RCW 46.17.015	RCW 46.68.400
(f) License service	RCW 46.17.025	RCW 46.17.025	RCW 46.68.220
(g) Nonresident vessel permit	\$25.00	RCW 88.02.620(3)	Subsection (6) of this section
(h) Registration	\$10.50	RCW 88.02.560(2)	General fund
(i) Replacement decal	\$1.25	RCW 88.02.595(1)(c)	General fund
(j) Title application	\$5.00	RCW 88.02.515	General fund
(k) Transfer	\$1.00	RCW 88.02.560(7)	General fund
(l) Vessel visitor permit	\$30.00	RCW 88.02.610(3)	General fund

(2) The five dollar dealer temporary permit fee required in subsection (1) of this section must be credited to the payment of registration fees at the time application for registration is made.

(3)(a) ~~(Until June 30, 2012,)~~ The derelict vessel and invasive species removal fee required in subsection (1) of this section is five dollars and must be distributed as follows:

(i) One dollar and fifty cents must be deposited in the aquatic invasive species prevention account created in RCW 77.12.879;

(ii) One dollar must be deposited into the ~~(freshwater)~~ aquatic algae control account created in RCW 43.21A.667;

(iii) Fifty cents must be deposited into the aquatic invasive species enforcement account created in RCW 43.43.400; and

(iv) Two dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100.

~~(b) (On and after June 30, 2012, the derelict vessel and invasive species removal fee is two dollars and must be deposited into the derelict vessel removal account created in RCW 79.100.100.)~~ If the department of natural resources indicates that the balance of the derelict vessel removal account, not including any transfer or appropriation of funds into the account or funds deposited into the account collected under subsection (5) of this section reaches one million dollars as of March 1st of any year, the collection of the two dollars of the derelict vessel and invasive species removal fee that is deposited into the derelict vessel removal account as authorized in (a)(iv) of this subsection must be suspended for the following fiscal year.

(4) Until January 1, 2014, an annual derelict vessel removal surcharge of one dollar must be charged with each vessel registration. The surcharge:

(a) Is to address the significant backlog of derelict vessels accumulated in Washington state waters that pose a threat to the health and safety of the people and to the environment;

(b) Is to be used only for the removal of vessels that are less than seven-five feet in length; and

(c) Must be deposited into the derelict vessel removal account created in RCW 79.100.100.

(5) The twenty-five dollar nonresident vessel permit fee must be paid by the vessel owner to the department for the cost of providing the identification document by the department. Any moneys remaining from the fee

after the payment of costs must be allocated to counties by the state treasurer for approved boating safety programs under *RCW 88.02.655.

(6) The thirty dollar vessel visitor permit fee must be distributed as follows:

(a) Five dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100;

(b) The department may keep an amount to cover costs for providing the vessel visitor permit;

(c) Any moneys remaining must be allocated to counties by the state treasurer for approved boating safety programs under *RCW 88.02.655; and

(d) Any fees required for licensing agents under RCW 46.17.005 are in addition to any other fee or tax due for the titling and registration of vessels. [2011 c 169 § 1; 2010 c 161 § 1028.]

*Reviser's note: RCW 88.02.655 was repealed by 2011 c 171 § 137, effective July 1, 2011.

88.02.640 Fees by type—Disposition, distribution (as amended by 2011 c 171). (1) In addition to any other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge the following vessel fees and surcharge:

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(a) Dealer temporary permit	\$5.00	RCW 88.02.800(2)	General fund
(b) Derelict vessel and invasive species removal	Subsection (3) of this section	((Subsections (3) and (4))) Subsection (3) of this section	Subsection (3) of this section
(c) Derelict vessel removal surcharge	\$1.00	Subsection (4) of this section	Subsection (4) of this section
(d) Duplicate registration	\$1.25	RCW 88.02.590(1)(c)	General fund
((d)) (e) Filing	RCW 46.17.005	RCW 46.17.005	RCW ((46.68.440)) 46.68.400
((e)) (f) License plate technology	RCW 46.17.015	RCW 46.17.015	RCW ((46.68.400)) 46.68.370
((f)) (g) License service	RCW 46.17.025	RCW 46.17.025	RCW 46.68.220
((g)) (h) Nonresident vessel permit	\$25.00	RCW 88.02.620(3)	Subsection ((6)) (5) of this section
((h)) (i) Registration	\$10.50	RCW 88.02.560(2)	((General fund)) RCW 88.02.650
((i)) (j) Replacement decal	\$1.25	RCW 88.02.595(1)(c)	General fund
((j)) (k) Title application	\$5.00	RCW 88.02.515	General fund
((k)) (l) Transfer	\$1.00	RCW 88.02.560(7)	General fund
((l)) (m) Vessel visitor permit	\$30.00	RCW 88.02.610(3)	((General fund)) Subsection (6) of this section

(2) The five dollar dealer temporary permit fee required in subsection (1) of this section must be credited to the payment of registration fees at the time application for registration is made.

(3)(a) Until June 30, 2012, the derelict vessel and invasive species removal fee required in subsection (1) of this section is five dollars and must be distributed as follows:

(i) One dollar and fifty cents must be deposited in the aquatic invasive species prevention account created in RCW 77.12.879;

(ii) One dollar must be deposited into the freshwater aquatic algae control account created in RCW 43.21A.667;

(iii) Fifty cents must be deposited into the aquatic invasive species enforcement account created in RCW 43.43.400; and

(iv) Two dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100.

(b) On and after June 30, 2012, the derelict vessel and invasive species removal fee is two dollars and must be deposited into the derelict vessel removal account created in RCW 79.100.100. ~~(If the department of natural resources indicates that the balance of the derelict vessel removal account, not including any transfer or appropriation of funds into the account or funds deposited into the account collected under subsection (5) of this section reaches one million dollars as of March 1st of any year, the collection of the two dollar derelict vessel and invasive species removal fee must be suspended for the following fiscal year.)~~

(4) Until January 1, 2014, an annual derelict vessel removal surcharge of one dollar must be charged with each vessel registration. The surcharge:

(a) Is to address the significant backlog of derelict vessels accumulated in Washington state waters that pose a threat to the health and safety of the people and to the environment;

(b) Is to be used only for the removal of vessels that are less than seventy-five feet in length; and

(c) Must be deposited into the derelict vessel removal account created in RCW 79.100.100.

(5) The twenty-five dollar nonresident vessel permit fee must be paid by the vessel owner to the department for the cost of providing the identification document by the department. Any moneys remaining from the fee after the payment of costs must be allocated to counties by the state treasurer for approved boating safety programs under RCW ~~((88.02.655))~~ 88.02.650.

(6) The thirty dollar vessel visitor permit fee must be distributed as follows:

(a) Five dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100;

(b) The department may keep an amount to cover costs for providing the vessel visitor permit;

(c) Any moneys remaining must be allocated to counties by the state treasurer for approved boating safety programs under RCW ~~((88.02.655))~~ 88.02.650; and

(d) Any fees required for licensing agents under RCW 46.17.005 are in addition to any other fee or tax due for the titling and registration of vessels. [2011 c 171 § 134; 2010 c 161 § 1028.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

88.02.640 Fees by type—Disposition, distribution (as amended by 2011 c 326). (Effective January 1, 2012.) (1) In addition to any other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge the following vessel fees:

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(a) Dealer temporary permit	\$5.00	RCW 88.02.800(2)	General fund
(b) Derelict vessel and invasive species removal	Subsection (3) of this section	Subsections (3) and (4) of this section	Subsection (3) of this section
(c) Duplicate registration	\$1.25	RCW 88.02.590(1)(c)	General fund
(d) Filing	RCW 46.17.005	RCW 46.17.005	RCW 46.68.440
(e) License plate technology	RCW 46.17.015	RCW 46.17.015	RCW 46.68.400
(f) License service	RCW 46.17.025	RCW 46.17.025	RCW 46.68.220
(g) Nonresident vessel permit	\$25.00	RCW 88.02.620(3)	Subsection (6) of this section
(h) Quick title service	\$50.00	RCW 88.02.540(3)	Subsection (7) of this section
(i) Registration	\$10.50	RCW 88.02.560(2)	General fund
((i)) (j) Replacement decal	\$1.25	RCW 88.02.595(1)(c)	General fund
((j)) (k) Title application	\$5.00	RCW 88.02.515	General fund
((k)) (l) Transfer	\$1.00	RCW 88.02.560(7)	General fund

~~((m))~~ (m) Vessel visitor permit \$30.00 RCW 88.02.610(3) General fund

(2) The five dollar dealer temporary permit fee required in subsection (1) of this section must be credited to the payment of registration fees at the time application for registration is made.

(3)(a) Until June 30, 2012, the derelict vessel and invasive species removal fee required in subsection (1) of this section is five dollars and must be distributed as follows:

(i) One dollar and fifty cents must be deposited in the aquatic invasive species prevention account created in RCW 77.12.879;

(ii) One dollar must be deposited into the freshwater aquatic algae control account created in RCW 43.21A.667;

(iii) Fifty cents must be deposited into the aquatic invasive species enforcement account created in RCW 43.43.400; and

(iv) Two dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100.

(b) On and after June 30, 2012, the derelict vessel and invasive species removal fee is two dollars and must be deposited into the derelict vessel removal account created in RCW 79.100.100. If the department of natural resources indicates that the balance of the derelict vessel removal account, not including any transfer or appropriation of funds into the account or funds deposited into the account collected under subsection (5) of this section reaches one million dollars as of March 1st of any year, the collection of the two dollar derelict vessel and invasive species removal fee must be suspended for the following fiscal year.

(4) Until January 1, 2014, an annual derelict vessel removal surcharge of one dollar must be charged with each vessel registration. The surcharge:

(a) Is to address the significant backlog of derelict vessels accumulated in Washington state waters that pose a threat to the health and safety of the people and to the environment;

(b) Is to be used only for the removal of vessels that are less than seventy-five feet in length; and

(c) Must be deposited into the derelict vessel removal account created in RCW 79.100.100.

(5) The twenty-five dollar nonresident vessel permit fee must be paid by the vessel owner to the department for the cost of providing the identification document by the department. Any moneys remaining from the fee after the payment of costs must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.655.

(6) The thirty dollar vessel visitor permit fee must be distributed as follows:

(a) Five dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100;

(b) The department may keep an amount to cover costs for providing the vessel visitor permit;

(c) Any moneys remaining must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.655; and

(d) Any fees required for licensing agents under RCW 46.17.005 are in addition to any other fee or tax due for the titling and registration of vessels.

~~(7)(a) The fifty dollar quick title service fee must be distributed as follows:~~

~~(i) If the fee is paid to the director, the fee must be deposited to the general fund.~~

~~(ii) If the fee is paid to the participating county auditor or other agent or subagent appointed by the director, twenty-five dollars must be deposited to the general fund. The remainder must be retained by the county treasurer in the same manner as other fees collected by the county auditor.~~

~~(b) For the purposes of this subsection, "quick title" has the same meaning as in RCW 88.02.540. [2011 c 326 § 5; 2010 c 161 § 1028.]~~

Reviser's note: RCW 88.02.640 was amended three times during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Application—Effective date—2011 c 326: See notes following RCW 46.12.555.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.650 Deposit of fees in general fund—Allocation for boating safety and education and law enforcement purposes. General fees for vessel registrations collected by

the director must be deposited in the general fund. Any amount above one million one hundred thousand dollars per fiscal year must be allocated to counties by the state treasurer for boating safety/education and law enforcement programs. Eligibility for boating safety/education and law enforcement program allocations is contingent upon approval of the local boating safety program by the state parks and recreation commission. Fund allocation must be based on the numbers of registered vessels by county of moorage. Each benefitting county is responsible for equitable distribution of such allocation to other jurisdictions with approved boating safety programs within the county. Any fees not allocated to counties due to the absence of an approved boating safety program must be allocated to the state parks and recreation commission for awards to local governments to offset law enforcement and boating safety impacts of boaters recreating in jurisdictions other than where registered. Jurisdictions receiving funds under this section shall deposit the funds into an account dedicated solely for supporting the jurisdiction's boating safety programs. These funds may not replace existing local funds used for boating safety programs. [2011 c 171 § 135; 2010 c 161 § 1029; 2002 c 286 § 14; 1989 c 393 § 12; 1983 c 7 § 17. Formerly RCW 88.02.040.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

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

Commission to adopt rules: RCW 79A.60.595.

88.02.655 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 88.08 RCW SPECIFIC ACTS PROHIBITED

Sections

88.08.050 Injury to lighthouses or United States light.

88.08.050 Injury to lighthouses or United States light. Every person who shall willfully break, injure, deface, or destroy any lighthouse station, post, platform, step, lamp, or other structure pertaining to such lighthouse station, or shall extinguish or tamper with any light erected by the United States upon or along the navigable waters of this state to aid in the navigation thereof, in case no punishment is provided therefor by the laws of the United States, shall be punished:

(1) As a class B felony punishable by imprisonment in a state correctional facility for not more than ten years whenever such act may endanger the safety of any vessel navigating such waters, or jeopardize the safety of any person or property in or upon such vessel.

(2) In all other cases by imprisonment in the county jail for up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both. [2011 c 96 § 58; 2003 c 53 § 416; 1992 c 7 § 63; 1909 c 249 § 403; RRS § 2655.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

Chapter 88.46 RCW

VESSEL OIL SPILL PREVENTION AND RESPONSE

Sections

88.46.010	Definitions.
88.46.060	Contingency plans.
88.46.080	Unlawful operation of a covered vessel—Penalties—Evidence of approved contingency plan or prevention plan.
88.46.100	Notification of vessel emergencies resulting in discharge of oil.
88.46.180	Planning standards for equipment—Updates.
88.46.190	Rule making for vessels of opportunity response system.
88.46.210	Volunteer coordination system.
88.46.220	Equipment deployment drills of tank vessels.
88.46.230	Umbrella plan holders.

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

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering:

- The additional protection provided by the measures;
- The technological achievability of the measures; and
- The cost of the measures.

(2)(a) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration:

(i) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development; and

(ii) Processes that are currently in use.

(b) In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(5) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(6) "Department" means the department of ecology.

(7) "Director" means the director of the department of ecology.

(8) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(9)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(10) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility.

(13) "Oil" or "oils" means oil of any kind that is liquid at atmospheric temperature and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(18) "Race Rocks light" means the nautical landmark located southwest of the city of Victoria, British Columbia.

(19) "Regional vessels of opportunity response group" means a group of nondedicated vessels participating in a ves-

sels of opportunity response system to respond when needed and available to spills in a defined geographic area.

(20) "Severe weather conditions" means observed nautical conditions with sustained winds measured at forty knots and wave heights measured between twelve and eighteen feet.

(21) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(22) "Spill" means an unauthorized discharge of oil into the waters of the state.

(23) "Strait of Juan de Fuca" means waters off the northern coast of the Olympic Peninsula seaward of a line drawn from New Dungeness light in Clallam county to Discovery Island light on Vancouver Island, British Columbia, Canada.

(24) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(25) "Umbrella plan holder" means a nonprofit corporation established consistent with this chapter for the purposes of providing oil spill response and contingency plan coverage.

(26) "Vessel emergency" means a substantial threat of pollution originating from a covered vessel, including loss or serious degradation of propulsion, steering, means of navigation, primary electrical generating capability, and seakeeping capability.

(27) "Vessels of opportunity response system" means nondedicated boats and operators, including fishing and other vessels, that are under contract with and equipped by contingency plan holders to assist with oil spill response activities, including on-water oil recovery in the near shore environment and the placement of oil spill containment booms to protect sensitive habitats.

(28) "Volunteer coordination system" means an oil spill response system that, before a spill occurs, prepares for the coordination of volunteers to assist with appropriate oil spill response activities, which may include shoreline protection and cleanup, wildlife recovery, field observation, light construction, facility maintenance, donations management, clerical support, and other aspects of a spill response.

(29) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(30) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions. [2011 c 122 § 1. Prior: 2009 c 11 § 7; 2007 c 347 § 5; 2000 c 69 § 1; 1992 c 73 § 18; 1991 c 200 § 414.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Request for federal contribution to establish regional oil spill response equipment caches—2011 c 122: See note following RCW 88.46.180.

Findings—Intent—Emergency response system—Coordination with British Columbia—2009 c 11: See notes following RCW 88.46.130.

Additional notes found at www.leg.wa.gov

88.46.060 Contingency plans. (1) Each covered vessel shall have a contingency plan for the containment and cleanup of oil spills from the covered vessel into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any vessel which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department, removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs consistent with this chapter to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities. The departments of ecology, fish and wildlife, natural resources, and archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

(h) State the means of protecting and mitigating effects on the environment, including fish, shellfish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(i) Establish guidelines for the use of equipment by the crew of a vessel to minimize vessel damage, stop or reduce any spilling from the vessel, and, only when appropriate and only when vessel safety is assured, contain and clean up the spilled oil;

(j) Provide arrangements for the repositioning of spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(k) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(l) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(m) Until a spill prevention plan has been submitted pursuant to RCW 88.46.040, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a vessel, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(n) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment;

(o) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules;

(p) Compliance with RCW 88.46.230 if the contingency plan is submitted by an umbrella plan holder; and

(q) Include any additional elements of contingency plans as required by this chapter.

(2) The owner or operator of a covered vessel must submit any required contingency plan updates to the department within the timelines established by the department.

(3)(a) The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo, or a nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member, shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the department, the owner or operator of a facility may submit a single contingency plan for tank vessels of a particular class that will be unloading cargo at the facility.

(b) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the cargo vessel or passenger vessel, by the agent for the vessel resident in this state, or by a nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member. Subject to conditions imposed by the department, the owner, operator, or agent may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(c) A person who has contracted with a covered vessel to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one covered vessel.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification

procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries and wildlife, shellfish beds, and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6)(a) The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(b) The department must notify the plan holder in writing within sixty-five days of an initial or amended plan's submittal to the department as to whether the plan is disapproved, approved, or conditionally approved. If a plan is conditionally approved, the department must clearly describe each condition and specify a schedule for plan holders to submit required updates.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the vessels covered by the plan, and other information the department determines should be included.

(8) An owner or operator of a covered vessel shall notify the department in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(10) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law. [2011 c 122 § 6; 2005 c 78 § 2; 2000 c 69 § 6; 1995 c 148 § 3; 1992 c 73 § 20; 1991 c 200 § 419.]

Request for federal contribution to establish regional oil spill response equipment caches—2011 c 122: See note following RCW 88.46.180.

Additional notes found at www.leg.wa.gov

88.46.080 Unlawful operation of a covered vessel—Penalties—Evidence of approved contingency plan or prevention plan. (1) Except as provided in subsection (3) of this section, it shall be unlawful for the owner or operator to knowingly and intentionally operate in this state or on the waters of this state a covered vessel without an approved contingency plan or an approved prevention plan as required by this chapter, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

(2)(a) The first conviction under this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) A second or subsequent conviction is a class C felony under chapter 9A.20 RCW.

(3) It shall not be unlawful for the owner or operator to operate a covered vessel if:

(a) The covered vessel is not required to have a contingency plan, spill prevention plan, or financial responsibility;

(b) All required plans have been submitted to the department as required by this chapter and rules adopted by the department and the department is reviewing the plan and has not denied approval; or

(c) The covered vessel has entered state waters after the United States coast guard has determined that the vessel is in distress.

(4) A person may rely on a copy of the statement issued by the department pursuant to RCW 88.46.060 as evidence that a vessel has an approved contingency plan and the statement issued pursuant to RCW 88.46.040 that a vessel has an approved prevention plan.

(5) Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of the director or a court in pursuance thereof is guilty of a gross misdemeanor, as provided in chapter 9A.20 RCW, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for up to three hundred sixty-four days, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation. [2011 c 96 § 59; 2003 c 53 § 417; 2000 c 69 § 8; 1992 c 73 § 22; 1991 c 200 § 421.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

Additional notes found at www.leg.wa.gov

88.46.100 Notification of vessel emergencies resulting in discharge of oil. In addition to any notifications that the owner or operator of a covered vessel must provide to the United States coast guard regarding a vessel emergency, the owner or operator of a covered vessel must notify the state of any vessel emergency that results in the discharge or substantial threat of discharge of oil to state waters or that may affect the natural resources of the state within one hour of the onset of that emergency. The purpose of this notification is to enable the department to coordinate with the vessel operator, contingency plan holder, and the United States coast guard to protect the public health, welfare, and natural resources of the state and to ensure all reasonable spill preparedness and response measures are in place prior to a spill occurring.

[2011 c 122 § 8; 2000 c 69 § 10; 1995 c 391 § 9; 1991 c 200 § 423.]

Request for federal contribution to establish regional oil spill response equipment caches—2011 c 122: See note following RCW 88.46.180.

Additional notes found at www.leg.wa.gov

88.46.180 Planning standards for equipment—Updates. (1) The department shall evaluate and update planning standards for oil spill response equipment required under contingency plans required by this chapter, including aerial surveillance, in order to ensure access in the state to equipment that represents the best achievable protection to respond to a worst case spill and provide for continuous operation of oil spill response activities to the maximum extent practicable and without jeopardizing crew safety, as determined by the incident commander or the unified command.

(2) The department shall by rule update the planning standards at five-year intervals to ensure the maintenance of best available protection over time. Rule updates to covered nontank vessels shall minimize potential impacts to discretionary cargo moved through the state.

(3) The department shall evaluate and update planning standards for tank vessels by December 31, 2012. [2011 c 122 § 2.]

Request for federal contribution to establish regional oil spill response equipment caches—2011 c 122: "(1) The director of the department of ecology must formally request that the federal government contribute to the establishment of regional oil spill response equipment caches in Washington to ensure adequate response capabilities during a multiple spill event.

(2) This section expires December 31, 2014." [2011 c 122 § 11.]

88.46.190 Rule making for vessels of opportunity response system. By December 31, 2012, the department shall complete rule making for purposes of improving the effectiveness of the vessels of opportunity [response] system to participate in spill response. [2011 c 122 § 3.]

Request for federal contribution to establish regional oil spill response equipment caches—2011 c 122: See note following RCW 88.46.180.

88.46.210 Volunteer coordination system. (1) The department shall establish a volunteer coordination system. The volunteer coordination system may be included as a part of the state's overall oil spill response strategy, and may be implemented by local emergency management organizations, in coordination with any analogous federal efforts, to supplement the state's timely and effective response to spills.

(2) The department should consider how the volunteer coordination system will:

(a) Coordinate with the incident commander or unified command of an oil spill and any affected local governments to receive, screen, and register volunteers who are not affiliated with the emergency management organization or a local nongovernmental organization;

(b) Coordinate the management of volunteers with local nongovernmental organizations and their affiliated volunteers;

(c) Coordinate appropriate response operations with different classes of volunteers, including pretrained volunteers

and convergent volunteers, to fulfill requests by the department or an oil spill incident commander or unified command;

(d) Coordinate public outreach regarding the need for and use of volunteers;

(e) Determine minimum participation criteria for volunteers; and

(f) Identify volunteer training requirements and, if applicable, provide training opportunities for volunteers prior to an oil spill response incident.

(3) An act or omission by any volunteer participating in a spill response or training as part of a volunteer coordination system, while engaged in such activities, does not impose any liability on any state agency, any participating local emergency management organization, or the volunteer for civil damages resulting from the act or omission. However, the immunity provided under this subsection does not apply to an act or omission that constitutes gross negligence or willful or wanton misconduct.

(4) The decisions to utilize volunteers in an oil spill response, which volunteers to utilize, and to determine which response activities are appropriate for volunteer participation in any given response are the sole responsibilities of the designated incident commander or unified command. [2011 c 122 § 4.]

Request for federal contribution to establish regional oil spill response equipment caches—2011 c 122: See note following RCW 88.46.180.

88.46.220 Equipment deployment drills of tank vessels. (1) The department is responsible for requiring joint large-scale, multiple plan equipment deployment drills of tank vessels to determine the adequacy of the owner's or operator's compliance with the contingency plan requirements of this chapter. The department must order at least one drill as outlined in this section every three years.

(2) Drills required under this section must focus on, at a minimum, the following:

(a) The functional ability for multiple contingency plans to be simultaneously activated with the purpose of testing the ability for dedicated equipment and trained personnel cited in multiple contingency plans to be activated in a large scale spill; and

(b) The operational readiness during both the first six hours of a spill and, at the department's discretion, over multiple operational periods of response.

(3) Drills required under this section may be incorporated into other drill requirements under this chapter to avoid increasing the number of drills and equipment deployments otherwise required.

(4) Each successful drill conducted under this section may be considered by the department as a drill of the underlying contingency plan and credit may be awarded to the plan holder accordingly.

(5) The department shall, when practicable, coordinate with applicable federal agencies, the state of Oregon, and the province of British Columbia to establish a drill incident command and to help ensure that lessons learned from the drills are evaluated with the goal of improving the underlying contingency plans. [2011 c 122 § 5.]

Request for federal contribution to establish regional oil spill response equipment caches—2011 c 122: See note following RCW 88.46.180

88.46.230 Umbrella plan holders. (1) When submitting a contingency plan to the department under RCW 88.46.060, any umbrella plan holder that enrolls both tank vessels and covered vessels that are not tank vessels must, in addition to satisfying the other requirements of this chapter, specify:

(a) The maximum worst case discharge volume from covered vessels that are not tank vessels to be covered by the umbrella plan holder's contingency plan; and

(b) The maximum worst case discharge volume from tank vessels to be covered by the umbrella plan holder's contingency plan.

(2) Any owner or operator of a covered vessel having a worst case discharge volume that exceeds the maximum volume covered by an approved umbrella plan holder may enroll with the umbrella plan holder if the owner or operator of the covered vessel maintains an agreement with another entity to provide supplemental equipment sufficient to meet the requirements of this chapter.

(3) The department must approve an umbrella plan holder that covers vessels having a worst case discharge volume that exceeds the maximum volume if:

(a) The department determines that the umbrella plan holder should be approved for a lower discharge volume;

(b) The vessel owner or operator provides documentation to the umbrella plan holder authorizing the umbrella plan holder to activate additional resources sufficient to meet the worst case discharge volume of the vessel; and

(c) The department has previously approved a plan that provides access to the same resources identified in (3)(b) [(b) of this subsection] to meet the requirements of this chapter for worst case discharge volumes equal to or greater than the worst case discharge volume of the vessel.

(4) The umbrella plan holder must describe in the plan how the activation of additional resources will be implemented and provide the department the ability to review and inspect any documentation that the umbrella plan holder relies on to enroll a vessel with a worst case discharge that exceeds the plan's maximum volume. [2011 c 122 § 7.]

Request for federal contribution to establish regional oil spill response equipment caches—2011 c 122: See note following RCW 88.46.180.

Title 90

WATER RIGHTS—ENVIRONMENT

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WATER CODE

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- 90.03.380 Right to water attaches to land—Transfer or change in point of diversion—Transfer of rights from one district to another—Priority of water rights applications—Exemption for small irrigation impoundments—Electronic notice of an application for an interbasin water rights transfer. (*Effective until June 30, 2019.*)
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90.03.380 Right to water attaches to land—Transfer or change in point of diversion—Transfer of rights from one district to another—Priority of water rights applications—Exemption for small irrigation impoundments—Electronic notice of an application for an interbasin water rights transfer. (*Effective until June 30, 2019.*) (1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate

or permit to divert water. The time period that the water right was banked under RCW 90.92.070, in an approved local water plan created under RCW 90.92.090, or the water right was subject to an agreement to not divert under RCW 90.92.050 will not be included in the most recent five-year period of continuous beneficial use for the purpose of determining the annual consumptive quantity under this section. If the water right has not been used during the previous five years but the nonuse of which qualifies for one or more of the statutory good causes or exceptions to relinquishment in RCW 90.14.140 and 90.44.520, the period of nonuse is not included in the most recent five-year period of continuous beneficial use for purposes of determining the annual consumptive quantity of water under this section.

(2) If an application for change proposes to transfer water rights from one irrigation district to another, the department shall, before publication of notice, receive concurrence from each of the irrigation districts that such transfer or change will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of either of the districts.

(3) A change in place of use by an individual water user or users of water provided by an irrigation district need only receive approval for the change from the board of directors of the district if the use of water continues within the irrigation district, and when water is provided by an irrigation entity that is a member of a board of joint control created under chapter 87.80 RCW, approval need only be received from the board of joint control if the use of water continues within the area of jurisdiction of the joint board and the change can be made without detriment or injury to existing rights.

(4) This section shall not apply to trust water rights acquired by the state through the funding of water conservation projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

(5)(a) Pending applications for new water rights are not entitled to protection from impairment, injury, or detriment when an application relating to an existing surface or ground water right is considered.

(b) Applications relating to existing surface or ground water rights may be processed and decisions on them rendered independently of processing and rendering decisions on pending applications for new water rights within the same source of supply without regard to the date of filing of the pending applications for new water rights.

(c) Notwithstanding any other existing authority to process applications, including but not limited to the authority to process applications under WAC 173-152-050 as it existed on January 1, 2001, an application relating to an existing surface or ground water right may be processed ahead of a previously filed application relating to an existing right when sufficient information for a decision on the previously filed application is not available and the applicant for the previously filed application is sent written notice that explains what information is not available and informs the applicant that processing of the next application will begin. The previously filed application does not lose its priority date and if the information is provided by the applicant within sixty days, the previously filed application shall be processed at that time. This subsection (5)(c) does not affect any other existing authority to process applications.

(d) Nothing in this subsection (5) is intended to stop the processing of applications for new water rights.

(6) No applicant for a change, transfer, or amendment of a water right may be required to give up any part of the applicant's valid water right or claim to a state agency, the trust water rights program, or to other persons as a condition of processing the application.

(7) In revising the provisions of this section and adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

(8) The development and use of a small irrigation impoundment, as defined in RCW 90.03.370(8), does not constitute a change or amendment for the purposes of this section. The exemption expressly provided by this subsection shall not be construed as requiring a change or transfer of any existing water right to enable the holder of the right to store water governed by the right.

(9) This section does not apply to a water right involved in an approved local water plan created under RCW 90.92.090, a water right that is subject to an agreement not to divert under RCW 90.92.050, or a banked water right under RCW 90.92.070.

(10)(a) The department may only approve an application submitted after July 22, 2011, for an interbasin water rights transfer after providing notice electronically to the board of county commissioners in the county of origin upon receipt of an application.

(b) For the purposes of this subsection:

(i) "Interbasin water rights transfer" means a transfer of a water right for which the proposed point of diversion is in a different basin than the proposed place of beneficial use.

(ii) "County of origin" means the county from which a water right is transferred or proposed to be transferred.

(c) This subsection applies to counties located east of the crest of the Cascade mountains. [2011 c 112 § 2; 2009 c 183 § 15; 2003 c 329 § 2; 2001 c 237 § 5; 1997 c 442 § 801; 1996 c 320 § 19; 1991 c 347 § 15; 1987 c 109 § 94; 1929 c 122 § 6; 1917 c 117 § 39; RRS § 7391. Formerly RCW 90.28.090.]

Expiration date—2011 c 112 § 2: "Section 2 of this act expires June 30, 2019." [2011 c 112 § 4.]

Findings—Intent—2011 c 112: "The legislature finds that because it is increasingly difficult for water users to acquire new water rights, transfers are a valuable and necessary water management tool. The legislature further finds that interbasin water right transfers may impact the economic and social welfare of rural communities. Therefore, the legislature intends for the department of ecology to provide notice electronically of a proposed interbasin water rights transfer to the board of commissioners in the county of origin before issuing a change authorization." [2011 c 112 § 1.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

Finding—Intent—Severability—Effective date—2001 c 237: See notes following RCW 90.82.040.

Intent—2001 c 237: See note following RCW 90.66.065.

Purposes—1991 c 347: See note following RCW 90.42.005.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Application to Yakima river basin trust water rights: RCW 90.38.040.

Additional notes found at www.leg.wa.gov

90.03.380 Right to water attaches to land—Transfer or change in point of diversion—Transfer of rights from one district to another—Priority of water rights applications—Exemption for small irrigation impoundments—Electronic notice of an application for an interbasin water rights transfer. (Effective June 30, 2019.) (1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water.

(2) If an application for change proposes to transfer water rights from one irrigation district to another, the department shall, before publication of notice, receive concurrence from each of the irrigation districts that such transfer or change will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of either of the districts.

(3) A change in place of use by an individual water user or users of water provided by an irrigation district need only receive approval for the change from the board of directors of the district if the use of water continues within the irrigation district, and when water is provided by an irrigation entity that is a member of a board of joint control created under chapter 87.80 RCW, approval need only be received from the board of joint control if the use of water continues within the area of jurisdiction of the joint board and the change can be made without detriment or injury to existing rights.

(4) This section shall not apply to trust water rights acquired by the state through the funding of water conserva-

tion projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

(5)(a) Pending applications for new water rights are not entitled to protection from impairment, injury, or detriment when an application relating to an existing surface or ground water right is considered.

(b) Applications relating to existing surface or ground water rights may be processed and decisions on them rendered independently of processing and rendering decisions on pending applications for new water rights within the same source of supply without regard to the date of filing of the pending applications for new water rights.

(c) Notwithstanding any other existing authority to process applications, including but not limited to the authority to process applications under WAC 173-152-050 as it existed on January 1, 2001, an application relating to an existing surface or ground water right may be processed ahead of a previously filed application relating to an existing right when sufficient information for a decision on the previously filed application is not available and the applicant for the previously filed application is sent written notice that explains what information is not available and informs the applicant that processing of the next application will begin. The previously filed application does not lose its priority date and if the information is provided by the applicant within sixty days, the previously filed application shall be processed at that time. This subsection (5)(c) does not affect any other existing authority to process applications.

(d) Nothing in this subsection (5) is intended to stop the processing of applications for new water rights.

(6) No applicant for a change, transfer, or amendment of a water right may be required to give up any part of the applicant's valid water right or claim to a state agency, the trust water rights program, or to other persons as a condition of processing the application.

(7) In revising the provisions of this section and adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

(8) The development and use of a small irrigation impoundment, as defined in RCW 90.03.370(8), does not constitute a change or amendment for the purposes of this section. The exemption expressly provided by this subsection shall not be construed as requiring a change or transfer of any existing water right to enable the holder of the right to store water governed by the right.

(9)(a) The department may only approve an application submitted after June 30, 2019, for an interbasin water rights transfer after providing notice electronically to the board of county commissioners in the county of origin upon receipt of an application.

(b) For the purposes of this subsection:

(i) "Interbasin water rights transfer" means a transfer of a water right for which the proposed point of diversion is in a different basin than the proposed place of beneficial use.

(ii) "County of origin" means the county from which a water right is transferred or proposed to be transferred.

(c) This subsection applies to counties located east of the crest of the Cascade mountains. [2011 c 112 § 3; 2003 c 329

§ 2; 2001 c 237 § 5; 1997 c 442 § 801; 1996 c 320 § 19; 1991 c 347 § 15; 1987 c 109 § 94; 1929 c 122 § 6; 1917 c 117 § 39; RRS § 7391. Formerly RCW 90.28.090.]

Effective date—2011 c 112 § 3: "Section 3 of this act takes effect June 30, 2019." [2011 c 112 § 5.]

Finding—Intent—Severability—Effective date—2001 c 237: See notes following RCW 90.82.040.

Intent—2001 c 237: See note following RCW 90.66.065.

Purposes—1991 c 347: See note following RCW 90.42.005.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Application to Yakima river basin trust water rights: RCW 90.38.040.

Additional notes found at www.leg.wa.gov

90.03.397 Department may approve change of the point of diversion prescribed in a permit to appropriate surface water—Requirements. (1) The department may approve a change of the point of diversion prescribed in a permit to appropriate surface water for a beneficial use if the ownership, purpose of use, season of use, and place of use of the permit remain the same to an approved intake structure with capacity to transport the additional diversion to either: (a) A point of diversion that is located downstream; or (b) a point of diversion located between Columbia river miles 215.6 and 292, if the existing point of diversion is contained therein.

(2) This section may not be construed as limiting in any manner whatsoever other authorities of the department under RCW 90.03.380 or other changes that may be approved under RCW 90.03.380 under authorities existing before July 25, 1999. [2011 c 117 § 1; 1999 c 232 § 2.]

Chapter 90.44 RCW

REGULATION OF PUBLIC GROUNDWATERS

Sections

90.44.510 Superseding water right permit or certificate—Water delivered from federal Columbia basin project.

90.44.510 Superseding water right permit or certificate—Water delivered from federal Columbia basin project. The department shall issue a superseding water right permit or certificate for a groundwater right where the source of water is an aquifer for which the department adopts rules establishing a groundwater management subarea and water from the federal Columbia basin project is delivered for use by a person who holds such a groundwater right. The superseding water right permit or certificate shall designate that portion of the groundwater right that is replaced by water from the federal Columbia basin project as a standby or reserve right that may be used when water delivered by the federal project is curtailed or otherwise not available. The period of curtailment or unavailability shall be deemed a low flow period under RCW 90.14.140(2)(b). The total number of acres irrigated by the person under the groundwater right and through the use of water delivered from the federal project must not exceed the quantity of water authorized by the federal bureau of reclamation and number of acres irrigated under the person's water right permit or certificate for

the use of water from the aquifer. [2011 c 72 § 1; 2004 c 195 § 3.]

Chapter 90.46 RCW

RECLAIMED WATER USE

Sections

90.46.015 Rules—Coordination with department of health—Consultation with advisory committee.
90.46.260 Penalty.

90.46.015 Rules—Coordination with department of health—Consultation with advisory committee. (1) The department of ecology shall, in coordination with the department of health, adopt rules for reclaimed water use consistent with this chapter. The rules must address all aspects of reclaimed water use, including commercial and industrial uses, land applications, direct groundwater recharge, wetland discharge, surface percolation, constructed wetlands, and streamflow or surface water augmentation. The department of health shall, in coordination with the department of ecology, adopt rules for greywater reuse. The rules must also designate whether the department of ecology or the department of health will be the lead agency responsible for a particular aspect of reclaimed water use. In developing the rules, the departments of health and ecology shall amend or rescind any existing rules on reclaimed water in conflict with the new rules.

(2) All rules required to be adopted pursuant to this section must be completed no later than December 31, 2010, except that the department of ecology shall adopt rules for reclaimed water use no earlier than June 30, 2013.

(3) The department of ecology must consult with the advisory committee created under RCW 90.46.050 in all aspects of rule development required under this section. [2011 c 353 § 11; 2009 c 456 § 2; 2006 c 279 § 1.]

Intent—2011 c 353: See note following RCW 36.70A.130.

90.46.260 Penalty. Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of the lead agency or a court in pursuance thereof, is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for up to three hundred sixty-four days, or both, in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation. [2011 c 96 § 60; 2009 c 456 § 13.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Chapter 90.48 RCW

WATER POLLUTION CONTROL

Sections

90.48.140 Penalty.
90.48.260 Federal clean water act—Department designated as state agency, authority—Delegation of authority—Powers, duties, and functions.
90.48.366 Discharge of oil into waters of the state—Compensation schedule.

90.48.140 Penalty. Any person found guilty of willfully violating any of the provisions of this chapter or chapter 90.56 RCW, or any final written orders or directive of the department or a court in pursuance thereof is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for up to three hundred sixty-four days, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter or chapter 90.56 RCW occurs may be deemed a separate and additional violation. [2011 c 96 § 61; 2003 c 53 § 419; 1992 c 73 § 26; 1973 c 155 § 8; 1945 c 216 § 20; Rem. Supp. 1945 § 10964t.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

Additional notes found at www.leg.wa.gov

90.48.260 Federal clean water act—Department designated as state agency, authority—Delegation of authority—Powers, duties, and functions. (1) The department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW 90.71.210. The department of ecology may delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and duties regarding animal feeding operations and concentrated animal feeding operations, to the department of agriculture through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology. Adoption or issuance and implementation shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws. The powers granted herein include, among others, and notwithstanding any other provisions of chapter 90.48 RCW or otherwise, the following:

(a) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to: (i) Effluent treatment and limitation requirements together with timing requirements related thereto; (ii) applicable receiving water quality stan-

dards requirements; (iii) requirements of standards of performance for new sources; (iv) pretreatment requirements; (v) termination and modification of permits for cause; (vi) requirements for public notices and opportunities for public hearings; (vii) appropriate relationships with the secretary of the army in the administration of his responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of his duties, and with other governmental officials under the federal clean water act; (viii) requirements for inspection, monitoring, entry, and reporting; (ix) enforcement of the program through penalties, emergency powers, and criminal sanctions; (x) a continuing planning process; and (xi) user charges.

(b) The power to establish and administer state programs in a manner which will insure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

(c) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

The governor shall have authority to perform those actions required of him or her by the federal clean water act.

(2) By July 31, 2012, the department shall:

(a) Reissue without modification and for a term of one year any national pollutant discharge elimination system municipal storm water general permit first issued on January 17, 2007; and

(b) Issue an updated national pollutant discharge elimination system municipal storm water general permit for any permit first issued on January 17, 2007. An updated permit issued under this subsection shall become effective beginning August 1, 2013. [2011 c 353 § 12; 2007 c 341 § 55; 2003 c 325 § 7; 1988 c 220 § 1; 1983 c 270 § 1; 1979 ex.s. c 267 § 1; 1973 c 155 § 4; 1967 c 13 § 24.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Intent—Finding—2003 c 325: See note following RCW 90.64.030.

Additional notes found at www.leg.wa.gov

90.48.366 Discharge of oil into waters of the state—Compensation schedule. (1) The department, in consultation with the departments of fish and wildlife and natural resources, and the parks and recreation commission, shall adopt rules establishing a compensation schedule for the discharge of oil in violation of this chapter and chapter 90.56 RCW. The amount of compensation assessed under this schedule shall be:

(a) For spills totaling one thousand gallons or more in any one event, no less than three dollars per gallon of oil spilled and no greater than three hundred dollars per gallon of oil spilled; and

(b) For spills totaling less than one thousand gallons in any one event, no less than one dollar per gallon of oil spilled and no greater than one hundred dollars per gallon of oil spilled.

(2) Persistent oil recovered from the surface of the water within forty-eight hours of a discharge must be deducted from the total spill volume for purposes of determining the amount of compensation assessed under the compensation schedule.

(3) The compensation schedule adopted under this section shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the spill and shall take into account:

(a) Characteristics of any oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

(b) The sensitivity of the affected area as determined by such factors as:

(i) The location of the spill;

(ii) Habitat and living resource sensitivity;

(iii) Seasonal distribution or sensitivity of living resources;

(iv) Areas of recreational use or aesthetic importance;

(v) The proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law;

(vi) Significant archaeological resources as determined by the department of archaeology and historic preservation; and

(vii) Other areas of special ecological or recreational importance, as determined by the department; and

(c) Actions taken by the party who spilled oil or any party liable for the spill that:

(i) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or

(ii) Enhance or impede the detection of the spill, the determination of the quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as injured fish or wildlife. [2011 c 122 § 9; 2007 c 347 § 1; 1994 sp.s. c 9 § 855; 1992 c 73 § 28; 1991 c 200 § 812; 1989 c 388 § 2.]

Request for federal contribution to establish regional oil spill response equipment caches—2011 c 122: See note following RCW 88.46.180.

Intent—Application—Captions—Severability—1989 c 388: See notes following RCW 90.56.010.

Additional notes found at www.leg.wa.gov

Chapter 90.56 RCW

OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION AND RESPONSE

Sections

90.56.370 Strict liability of owner or controller of oil—Damages—Exceptions.

90.56.370 Strict liability of owner or controller of oil—Damages—Exceptions. (1) Any person owning oil or having control over oil that enters the waters of the state in violation of RCW 90.56.320 shall be strictly liable, without

regard to fault, for the damages to persons or property, public or private, caused by such entry.

(2) Damages for which responsible parties are liable under this section include loss of income, net revenue, the means of producing income or revenue, or an economic benefit resulting from an injury to or loss of real or personal property or natural resources.

(3) Damages for which responsible parties are liable under this section include damages provided in subsections (1) and (2) of this section resulting from the use and deployment of chemical dispersants or from in situ burning in response to a violation of RCW 90.56.320.

(4) In any action to recover damages resulting from the discharge of oil in violation of RCW 90.56.320, the owner or person having control over the oil shall be relieved from strict liability, without regard to fault, if that person can prove that the discharge was caused solely by:

(a) An act of war or sabotage;

(b) An act of God;

(c) Negligence on the part of the United States government; or

(d) Negligence on the part of the state of Washington.

(5) The liability established in this section shall in no way affect the rights which: (a) The owner or other person having control over the oil may have against any person whose acts may in any way have caused or contributed to the discharge of oil, or (b) the state of Washington may have against any person whose actions may have caused or contributed to the discharge of oil. [2011 c 122 § 10; 2000 c 69 § 21; 1990 c 116 § 18; 1970 ex.s. c 88 § 6. Formerly RCW 90.48.336.]

Request for federal contribution to establish regional oil spill response equipment caches—2011 c 122: See note following RCW 88.46.180.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Additional notes found at www.leg.wa.gov

Chapter 90.58 RCW

SHORELINE MANAGEMENT ACT OF 1971

Sections

90.58.080 Timetable for local governments to develop or amend master programs—Review of master programs—Grants.

90.58.090 Approval of master program or segments or amendments—Procedure—Departmental alternatives when shorelines of statewide significance—Later adoption of master program supersedes departmental program.

90.58.140 Development permits—Grounds for granting—Administration by local government, conditions—Applications—Notices—Rescission—Approval when permit for variance or conditional use.

90.58.180 Review of granting, denying, or rescinding permits by shorelines hearings board—Board to act—Local government appeals to board—Grounds for declaring rule, regulation, or guideline invalid—Appeals to court.

90.58.190 Appeal of department's decision to adopt or amend a master program.

90.58.270 Nonapplication to certain structures, docks, developments, etc., placed in navigable waters—Nonapplication to certain rights of action, authority—Floating homes must be classified as a conforming preferred use.

90.58.620 New or amended master programs—Authorized provisions.

90.58.080 Timetable for local governments to develop or amend master programs—Review of master

programs—Grants. (1) Local governments shall develop or amend a master program for regulation of uses of the shorelines of the state consistent with the required elements of the guidelines adopted by the department in accordance with the schedule established by this section.

(2)(a) Subject to the provisions of subsections (5) and (6) of this section, each local government subject to this chapter shall develop or amend its master program for the regulation of uses of shorelines within its jurisdiction according to the following schedule:

(i) On or before December 1, 2005, for the city of Port Townsend, the city of Bellingham, the city of Everett, Snohomish county, and Whatcom county;

(ii) On or before December 1, 2009, for King county and the cities within King county greater in population than ten thousand;

(iii) Except as provided by (a)(i) and (ii) of this subsection, on or before December 1, 2011, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(iv) On or before December 1, 2012, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(v) On or before December 1, 2013, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(vi) On or before December 1, 2014, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(b) Nothing in this subsection (2) shall preclude a local government from developing or amending its master program prior to the dates established by this subsection (2).

(3)(a) Following approval by the department of a new or amended master program, local governments required to develop or amend master programs on or before December 1, 2009, as provided by subsection (2)(a)(i) and (ii) of this section, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) of this section and shall not be required to complete master program amendments until the applicable dates established by subsection (4)(b) of this section. Any jurisdiction listed in subsection (2)(a)(i) of this section that has a new or amended master program approved by the department on or after March 1, 2002, but before July 27, 2003, shall not be required to complete master program amendments until the applicable date provided by subsection (4)(b) of this section.

(b) Following approval by the department of a new or amended master program, local governments choosing to develop or amend master programs on or before December 1, 2009, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) through (vi) of this section and shall not be required to complete master program amendments until the applicable dates established by subsection (4)(b) of this section.

(4)(a) Following the updates required by subsection (2) of this section, local governments shall conduct a review of their master programs at least once every eight years as required by (b) of this subsection. Following the review required by this subsection (4), local governments shall, if

necessary, revise their master programs. The purpose of the review is:

(i) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and

(ii) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

(b) Counties and cities shall take action to review and, if necessary, revise their master programs as required by (a) of this subsection as follows:

(i) On or before June 30, 2019, and every eight years thereafter, for King, Pierce, and Snohomish counties and the cities within those counties;

(ii) On or before June 30, 2020, and every eight years thereafter, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;

(iii) On or before June 30, 2021, and every eight years thereafter, for Benton, Chelan, Cowlitz, Douglas, Grant, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and

(iv) On or before June 30, 2022, and every eight years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5) In meeting the update requirements of subsection (2) of this section, local governments are encouraged to begin the process of developing or amending their master programs early and are eligible for grants from the department as provided by RCW 90.58.250, subject to available funding. Except for those local governments listed in subsection (2)(a)(i) and (ii) of this section, the deadline for completion of the new or amended master programs shall be two years after the date the grant is approved by the department. Subsequent master program review dates shall not be altered by the provisions of this subsection.

(6) In meeting the update requirements of subsection (2) of this section, the following shall apply:

(a) Grants to local governments for developing and amending master programs pursuant to the schedule established by this section shall be provided at least two years before the adoption dates specified in subsection (2) of this section. To the extent possible, the department shall allocate grants within the amount appropriated for such purposes to provide reasonable and adequate funding to local governments that have indicated their intent to develop or amend master programs during the biennium according to the schedule established by subsection (2) of this section. Any local government that applies for but does not receive funding to comply with the provisions of subsection (2) of this section may delay the development or amendment of its master program until the following biennium.

(b) Local governments with delayed compliance dates as provided in (a) of this subsection shall be the first priority for funding in subsequent biennia, and the development or amendment compliance deadline for those local governments shall be two years after the date of grant approval.

(c) Failure of the local government to apply in a timely manner for a master program development or amendment grant in accordance with the requirements of the department shall not be considered a delay resulting from the provisions of (a) of this subsection.

(7) In meeting the update requirements of subsection (2) of this section, all local governments subject to the requirements of this chapter that have not developed or amended master programs on or after March 1, 2002, shall, no later than December 1, 2014, develop or amend their master programs to comply with guidelines adopted by the department after January 1, 2003.

(8) In meeting the update requirements of subsection (2) of this section, local governments may be provided an additional year beyond the deadlines in this section to complete their master program or amendment. The department shall grant the request if it determines that the local government is likely to adopt or amend its master program within the additional year. [2011 c 353 § 13; 2007 c 170 § 1; 2003 c 262 § 2; 1995 c 347 § 305; 1974 ex.s. c 61 § 1; 1971 ex.s. c 286 § 8.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

90.58.090 Approval of master program or segments or amendments—Procedure—Departmental alternatives when shorelines of statewide significance—Later adoption of master program supersedes departmental program. (1) A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the department as provided in subsection (7) of this section. Within the time period provided in RCW 90.58.080, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

The department shall strive to achieve final action on a submitted master program within one hundred eighty days of receipt and shall post an annual assessment related to this performance benchmark on the agency web site.

(2) Upon receipt of a proposed master program or amendment, the department shall:

(a) Provide notice to and opportunity for written comment by all interested parties of record as a part of the local government review process for the proposal and to all persons, groups, and agencies that have requested in writing notice of proposed master programs or amendments generally or for a specific area, subject matter, or issue. The comment period shall be at least thirty days, unless the department determines that the level of complexity or controversy involved supports a shorter period;

(b) In the department's discretion, conduct a public hearing during the thirty-day comment period in the jurisdiction proposing the master program or amendment;

(c) Within fifteen days after the close of public comment, request the local government to review the issues identified by the public, interested parties, groups, and agencies and provide a written response as to how the proposal addresses the identified issues;

(d) Within thirty days after receipt of the local government response pursuant to (c) of this subsection, make writ-

ten findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines, provide a response to the issues identified in (c) of this subsection, and either approve the proposal as submitted, recommend specific changes necessary to make the proposal approvable, or deny approval of the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be provided to the local government, and made available to all interested persons, parties, groups, and agencies of record on the proposal;

(e) If the department recommends changes to the proposed master program or amendment, within thirty days after the department mails the written findings and conclusions to the local government, the local government may:

(i) Agree to the proposed changes by written notice to the department; or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally submitted by the department and with this chapter it shall approve the changes and provide notice to all recipients of the written findings and conclusions. If the department determines the proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may resubmit the proposal for public and agency review pursuant to this section or reject the proposal.

(3) The department shall approve the segment of a master program relating to shorelines unless it determines that the submitted segments are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.

(4) The department shall approve the segment of a master program relating to critical areas as defined by RCW 36.70A.030(5) provided the master program segment is consistent with RCW 90.58.020 and applicable shoreline guidelines, and if the segment provides a level of protection of critical areas at least equal to that provided by the local government's critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).

(5) The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the statewide interest. If the department does not approve a segment of a local government master program relating to a shoreline of statewide significance, the department may develop and by rule adopt an alternative to the local government's proposal.

(6) In the event a local government has not complied with the requirements of RCW 90.58.070 it may thereafter upon written notice to the department elect to adopt a master program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this chapter for the adoption of a master program for such shorelines.

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines.

(7) A master program or amendment to a master program takes effect when and in such form as approved or adopted by

the department. The effective date is fourteen days from the date of the department's written notice of final action to the local government stating the department has approved or rejected the proposal. For master programs adopted by rule, the effective date is governed by RCW 34.05.380. The department's written notice to the local government must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications to the proposal.

(a) Shoreline master programs that were adopted by the department prior to July 22, 1995, in accordance with the provisions of this section then in effect, shall be deemed approved by the department in accordance with the provisions of this section that became effective on that date.

(b) The department shall maintain a record of each master program, the action taken on any proposal for adoption or amendment of the master program, and any appeal of the department's action. The department's approved document of record constitutes the official master program.

(8) Promptly after approval or disapproval of a local government's shoreline master program or amendment, the department shall publish a notice consistent with RCW 36.70A.290 that the shoreline master program or amendment has been approved or disapproved. This notice must be filed for all shoreline master programs or amendments. If the notice is for a local government that does not plan under RCW 36.70A.040, the department must, on the day the notice is published, notify the legislative authority of the applicable local government by telephone or electronic means, followed by written communication as necessary, to ensure that the local government has received the full written decision of the approval or disapproval. [2011 c 353 § 14; 2011 c 277 § 2; 2003 c 321 § 3; 1997 c 429 § 50; 1995 c 347 § 306; 1971 ex.s. c 286 § 9.]

Reviser's note: This section was amended by 2011 c 277 § 2 and by 2011 c 353 § 14, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2011 c 353: See note following RCW 36.70A.130.

Finding—Intent—2003 c 321: See note following RCW 90.58.030.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

90.58.140 Development permits—Grounds for granting—Administration by local government, conditions—Applications—Notices—Rescission—Approval when permit for variance or conditional use. (1) A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

(2) A substantial development shall not be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

A permit shall be granted:

(a) From June 1, 1971, until such time as an applicable master program has become effective, only when the development proposed is consistent with: (i) The policy of RCW 90.58.020; and (ii) after their adoption, the guidelines and

rules of the department; and (iii) so far as can be ascertained, the master program being developed for the area;

(b) After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and this chapter.

(3) The local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. The administration of the system so established shall be performed exclusively by the local government.

(4) Except as otherwise specifically provided in subsection (1) of this section, the local government shall require notification of the public of all applications for permits governed by any permit system established pursuant to subsection (3) of this section by ensuring that notice of the application is given by at least one of the following methods:

(a) Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed;

(b) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed; or

(c) Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public.

The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after the issuance of the decision, may submit the comments or requests for decisions to the local government within thirty days of the last date the notice is to be published pursuant to this subsection. The local government shall forward, in a timely manner following the issuance of a decision, a copy of the decision to each person who submits a request for the decision.

If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.

(5) The system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section; or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of filing as defined in subsection (6) of this section except as follows:

(a) In the case of any permit issued to the state of Washington, department of transportation, for the construction and modification of SR 90 (I-90) on or adjacent to Lake Washington, the construction may begin after thirty days from the date of filing, and the permits are valid until December 31, 1995;

(b) Construction may be commenced no sooner than thirty days after the date of the appeal of the board's decision is filed if a permit is granted by the local government and (i) the granting of the permit is appealed to the shorelines hearings board within twenty-one days of the date of filing, (ii) the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the per-

mit, and (iii) an appeal for judicial review of the hearings board decision is filed pursuant to chapter 34.05 RCW. The appellant may request, within ten days of the filing of the appeal with the court, a hearing before the court to determine whether construction pursuant to the permit approved by the hearings board or to a revised permit issued pursuant to the order of the hearings board should not commence. If, at the conclusion of the hearing, the court finds that construction pursuant to such a permit would involve a significant, irreversible damaging of the environment, the court shall prohibit the permittee from commencing the construction pursuant to the approved or revised permit until all review proceedings are final. Construction pursuant to a permit revised at the direction of the hearings board may begin only on that portion of the substantial development for which the local government had originally issued the permit, and construction pursuant to such a revised permit on other portions of the substantial development may not begin until after all review proceedings are terminated. In such a hearing before the court, the burden of proving whether the construction may involve significant irreversible damage to the environment and demonstrating whether such construction would or would not be appropriate is on the appellant;

(c) If the permit is for a substantial development meeting the requirements of subsection (11) of this section, construction pursuant to that permit may not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section.

If a permittee begins construction pursuant to (a), (b), or (c) of this subsection, the construction is begun at the permittee's own risk. If, as a result of judicial review, the courts order the removal of any portion of the construction or the restoration of any portion of the environment involved or require the alteration of any portion of a substantial development constructed pursuant to a permit, the permittee is barred from recovering damages or costs involved in adhering to such requirements from the local government that granted the permit, the hearings board, or any appellant or intervener.

(6) Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general. This shall be accomplished by return receipt requested mail. A petition for review of such a decision must be commenced within twenty-one days from the date of filing of the decision.

(a) With regard to a permit other than a permit governed by subsection (10) of this section, "date of filing" as used in this section refers to the date of actual receipt by the department of the local government's decision.

(b) With regard to a permit for a variance or a conditional use governed by subsection (10) of this section, "date of filing" means the date the decision of the department is transmitted by the department to the local government.

(c) When a local government simultaneously transmits to the department its decision on a shoreline substantial development with its approval of either a shoreline conditional use permit or variance, or both, "date of filing" has the same meaning as defined in (b) of this subsection.

(d) The department shall notify in writing the local government and the applicant of the date of filing by telephone or

electronic means, followed by written communication as necessary, to ensure that the applicant has received the full written decision.

(7) Applicants for permits under this section have the burden of proving that a proposed substantial development is consistent with the criteria that must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.180 (1) and (2), the person requesting the review has the burden of proof.

(8) Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.

(9) The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under this section.

(10) Any permit for a variance or a conditional use issued with approval by a local government under their approved master program must be submitted to the department for its approval or disapproval.

(11)(a) An application for a substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion shall be subject to the following procedures:

(i) The public comment period under subsection (4) of this section shall be twenty days. The notice provided under subsection (4) of this section shall state the manner in which the public may obtain a copy of the local government decision on the application no later than two days following its issuance;

(ii) The local government shall issue its decision to grant or deny the permit within twenty-one days of the last day of the comment period specified in (a)(i) of this subsection; and

(iii) If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal shall be finally determined by the legislative authority within thirty days.

(b) For purposes of this section, a limited utility extension means the extension of a utility service that:

(i) Is categorically exempt under chapter 43.21C RCW for one or more of the following: Natural gas, electricity, telephone, water, or sewer;

(ii) Will serve an existing use in compliance with this chapter; and

(iii) Will not extend more than twenty-five hundred linear feet within the shorelines of the state. [2011 c 277 § 3; 2010 c 210 § 36; 1995 c 347 § 309; 1992 c 105 § 3; 1990 c 201 § 2; 1988 c 22 § 1; 1984 c 7 § 386; 1977 ex.s. c 358 § 1;

1975-'76 2nd ex.s. c 51 § 1; 1975 1st ex.s. c 182 § 3; 1973 2nd ex.s. c 19 § 1; 1971 ex.s. c 286 § 14.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Finding—Intent—1990 c 201: "The legislature finds that delays in substantial development permit review for the extension of vital utility services to existing and lawful uses within the shorelines of the state have caused hardship upon existing residents without serving any of the purposes and policies of the shoreline management act. It is the intent of this act to provide a more expeditious permit review process for that limited category of utility extension activities only, while fully preserving safeguards of public review and appeal rights regarding permit applications and decisions." [1990 c 201 § 1.]

Additional notes found at www.leg.wa.gov

90.58.180 Review of granting, denying, or rescinding permits by shorelines hearings board—Board to act—Local government appeals to board—Grounds for declaring rule, regulation, or guideline invalid—Appeals to court. (1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of filing of the decision as defined in RCW 90.58.140(6).

Within seven days of the filing of any petition for review with the board as provided in this section pertaining to a final decision of a local government, the petitioner shall serve copies of the petition on the department, the office of the attorney general, and the local government. The department and the attorney general may intervene to protect the public interest and ensure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the petition for review filed pursuant to this section. The shorelines hearings board shall schedule review proceedings on the petition for review without regard as to whether the period for the department or the attorney general to intervene has or has not expired.

(2) The department or the attorney general may obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition with the shorelines hearings board and the appropriate local government within twenty-one days from the date the final decision was filed as provided in RCW 90.58.140(6).

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. Judicial review of such proceedings of the shorelines hearings board is governed by chapter 34.05 RCW. The board shall issue its decision on the appeal authorized under subsections (1) and (2) of this section within one hundred eighty days after the date the petition is filed with the board or a petition to intervene is filed by the department or the attorney general, whichever is later. The time period may be extended by the board for a period of thirty days upon a showing of good cause or may be waived by the parties.

(4) Any person may appeal any rules, regulations, or guidelines adopted or approved by the department within

thirty days of the date of the adoption or approval. The board shall make a final decision within sixty days following the hearing held thereon.

(5) The board shall find the rule, regulation, or guideline to be valid and enter a final decision to that effect unless it determines that the rule, regulation, or guideline:

(a) Is clearly erroneous in light of the policy of this chapter; or

(b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or

(c) Is arbitrary and capricious; or

(d) Was developed without fully considering and evaluating all material submitted to the department during public review and comment; or

(e) Was not adopted in accordance with required procedures.

(6) If the board makes a determination under subsection (5)(a) through (e) of this section, it shall enter a final decision declaring the rule, regulation, or guideline invalid, remanding the rule, regulation, or guideline to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government and any other interested party, a new rule, regulation, or guideline consistent with the board's decision.

(7) A decision of the board on the validity of a rule, regulation, or guideline shall be subject to review in superior court, if authorized pursuant to chapter 34.05 RCW. A petition for review of the decision of the shorelines hearings board on a rule, regulation, or guideline shall be filed within thirty days after the date of final decision by the shorelines hearings board. [2011 c 277 § 4; 2010 c 210 § 37; 2003 c 393 § 22; 1997 c 199 § 1; 1995 c 347 § 310; 1994 c 253 § 3; 1989 c 175 § 183; 1986 c 292 § 2; 1975-'76 2nd ex.s. c 51 § 2; 1975 1st ex.s. c 182 § 4; 1973 1st ex.s. c 203 § 2; 1971 ex.s. c 286 § 18.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Appeal under this chapter also subject of appeal under state environmental policy act: RCW 43.21C.075.

Additional notes found at www.leg.wa.gov

90.58.190 Appeal of department's decision to adopt or amend a master program. (1) The appeal of the department's decision to adopt a master program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is governed by RCW 34.05.510 through 34.05.598.

(2)(a) The department's final decision to approve or reject a proposed master program or master program amendment by a local government planning under RCW 36.70A.040 shall be appealed to the growth management hearings board by filing a petition as provided in RCW 36.70A.290.

(b) If the appeal to the growth management hearings board concerns shorelines, the growth management hearings board shall review the proposed master program or amendment solely for compliance with the requirements of this chapter, the policy of RCW 90.58.020 and the applicable guidelines, the internal consistency provisions of RCW

36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under chapter 90.58 RCW.

(c) If the appeal to the growth management hearings board concerns a shoreline of statewide significance, the board shall uphold the decision by the department unless the board, by clear and convincing evidence, determines that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) The appellant has the burden of proof in all appeals to the growth management hearings board under this subsection.

(e) Any party aggrieved by a final decision of the growth management hearings board under this subsection may appeal the decision to superior court as provided in RCW 36.70A.300.

(3)(a) The department's final decision to approve or reject a proposed master program or master program amendment by a local government not planning under RCW 36.70A.040 shall be appealed to the shorelines hearings board by filing a petition within thirty days of the date that the department publishes notice of its final decision under RCW 90.58.090(8).

(b) In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program amendment and, after full consideration of the presentations of the local government and the department, shall determine the validity of the local government's master program or amendment in light of the policy of RCW 90.58.020 and the applicable guidelines.

(c) In an appeal relating to shorelines of statewide significance, the shorelines hearings board shall uphold the decision by the department unless the board determines, by clear and convincing evidence that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) Review by the shorelines hearings board shall be considered an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act. The aggrieved local government shall have the burden of proof in all such reviews.

(e) Whenever possible, the review by the shorelines hearings board shall be heard within the county where the land subject to the proposed master program or master program amendment is primarily located. The department and any local government aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in chapter 34.05 RCW.

(4) A master program amendment shall become effective after the approval of the department or after the decision of the shorelines hearings board to uphold the master program or master program amendment, provided that the board may remand the master program or master program adjustment to the local government or the department for modification prior to the final adoption of the master program or master program amendment. [2011 c 277 § 5. Prior: 2010 c 211 § 14; 2010 c 210 § 38; 2003 c 321 § 4; 1995 c 347 § 311; 1989 c 175 § 184; 1986 c 292 § 3; 1971 ex.s. c 286 § 19.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Finding—Intent—2003 c 321: See note following RCW 90.58.030.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

90.58.270 Nonapplication to certain structures, docks, developments, etc., placed in navigable waters—Nonapplication to certain rights of action, authority—Floating homes must be classified as a conforming preferred use. (1) Nothing in this statute shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or developments placed in navigable waters prior to December 4, 1969, and the consent and authorization of the state of Washington to the impairment of public rights of navigation, and corollary rights incidental thereto, caused by the retention and maintenance of said structures, improvements, docks, fills or developments are hereby granted: PROVIDED, That the consent herein given shall not relate to any structures, improvements, docks, fills, or developments placed on tidelands, shorelands, or beds underlying said waters which are in trespass or in violation of state statutes.

(2) Nothing in this section shall be construed as altering or abridging any private right of action, other than a private right which is based upon the impairment of public rights consented to in subsection (1) hereof.

(3) Nothing in this section shall be construed as altering or abridging the authority of the state or local governments to suppress or abate nuisances or to abate pollution.

(4) Subsection (1) of this section shall apply to any case pending in the courts of this state on June 1, 1971 relating to the removal of structures, improvements, docks, fills, or developments based on the impairment of public navigational rights.

(5)(a) A floating home permitted or legally established prior to January 1, 2011, must be classified as a conforming preferred use.

(b) For the purposes of this subsection:

(i) "Conforming preferred use" means that applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable.

(ii) "Floating home" means a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed. [2011 c 212 § 2; 1971 ex.s. c 286 § 27.]

Finding—2011 c 212: "The legislature recognizes that existing floating homes, as part of our state's existing houseboat communities, are an important cultural amenity and element of our maritime history. These surviving floating home communities are a linkage to the past, when our waterways were the focus of commerce, transport, and development. In order to ensure the vitality and long-term survival of these existing floating home communities, consistent with the legislature's goal of allowing their continued use, improvement, and replacement without undue burden, the legislature finds that it is necessary to clarify their legal status." [2011 c 212 § 1.]

90.58.620 New or amended master programs—Authorized provisions. (1) New or amended master programs approved by the department on or after September 1, 2011, may include provisions authorizing:

(a) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: Setbacks, buffers, or yards; area; bulk; height; or density; and

(b) Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the master program, including requirements for no net loss of shoreline ecological functions.

(2) For purposes of this section, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.

(3) Nothing in this section: (a) Restricts the ability of a master program to limit redevelopment, expansion, or replacement of over-water structures located in hazardous areas, such as floodplains and geologically hazardous areas; or (b) affects the application of other federal, state, or local government requirements to residential structures. [2011 c 323 § 2.]

Findings—2011 c 323: "(1) The legislature recognizes that there is concern from property owners regarding legal status of existing legally developed shoreline structures under updated shoreline master programs. Significant concern has been expressed by residential property owners during shoreline master program updates regarding the legal status of existing shoreline structures that may not meet current standards for new development.

(2) Engrossed House Bill No. 1653, enacted as chapter 107, Laws of 2010 clarified the status of existing structures in the shoreline area under the growth management act prior to the update of shoreline regulations. It is in the public interest to clarify the legal status of these structures that will apply after shoreline regulations are updated.

(3) Updated shoreline master programs must include provisions to ensure that expansion, redevelopment, and replacement of existing structures will result in no net loss of the ecological function of the shoreline. Classifying existing structures as legally conforming will not create a risk of degrading shoreline natural resources." [2011 c 323 § 1.]

Chapter 90.64 RCW

DAIRY NUTRIENT MANAGEMENT

Sections

90.64.030 Investigation of dairy farms—Report of findings—Corrective action—Violations of water quality laws—Waivers—Penalties.

90.64.030 Investigation of dairy farms—Report of findings—Corrective action—Violations of water quality laws—Waivers—Penalties. (1) Under the inspection program established in RCW 90.64.023, the department may investigate a dairy farm to determine whether the operation is discharging pollutants or has a record of discharging pollutants into surface or ground waters of the state. Upon concluding an investigation, the department shall make a written report of its findings, including the results of any water quality measurements, photographs, or other pertinent information, and provide a copy of the report to the dairy producer within twenty days of the investigation.

(2) The department shall investigate a written complaint filed with the department within three working days and shall

make a written report of its findings including the results of any water quality measurements, photographs, or other pertinent information. Within twenty days of receiving a written complaint, a copy of the findings shall be provided to the dairy producer subject to the complaint, and to the complainant if the person gave his or her name and address to the department at the time the complaint was filed.

(3) The department may consider past complaints against the same dairy farm from the same person and the results of its previous inspections, and has the discretion to decide whether to conduct an inspection if:

(a) The same or a similar complaint or complaints have been filed against the same dairy farm within the immediately preceding six-month period; and

(b) The department made a determination that the activity that was the subject of the prior complaint was not a violation.

(4) If the decision of the department is not to conduct an inspection, it shall document the decision and the reasons for the decision within twenty days. The department shall provide the decision to the complainant if the name and address were provided to the department, and to the dairy producer subject to the complaint, and the department shall place the decision in the department's administrative records.

(5) The report of findings of any inspection conducted as the result of either an oral or a written complaint shall be placed in the department's administrative records. Only findings of violations shall be entered into the database identified in RCW 90.64.130.

(6) A dairy farm that is determined to be a significant contributor of pollution based on actual water quality tests, photographs, or other pertinent information is subject to the provisions of this chapter and to the enforcement provisions of chapters 43.05 and 90.48 RCW, including civil penalties levied under RCW 90.48.144.

(7) If the department determines that an unresolved water quality problem from a dairy farm requires immediate corrective action, the department shall notify the producer and the district in which the problem is located. When corrective actions are required to address such unresolved water quality problems, the department shall provide copies of all final dairy farm inspection reports and documentation of all formal regulatory and enforcement actions taken by the department against that particular dairy farm to the local conservation district and to the appropriate dairy farm within twenty days.

(8) For a violation of water quality laws that is a first offense for a dairy producer, the penalty may be waived to allow the producer to come into compliance with water quality laws. The department shall record all legitimate violations and subsequent enforcement actions.

(9) A discharge, including a storm water discharge, to surface waters of the state shall not be considered a violation of this chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall therefore not be enforceable by the department of ecology or a third party, if at the time of the discharge, a violation is not occurring under RCW 90.64.010 (17). In addition, a dairy producer shall not be held liable for violations of this chapter, chapter 90.48 RCW, chapter 173-201A WAC, or the federal clean water act due to the discharge of dairy nutrients to waters of the state resulting from

spreading these materials on lands other than where the nutrients were generated, when the nutrients are spread by persons other than the dairy producer or the dairy producer's agent.

(10) As provided under RCW 7.48.305, agricultural activities associated with the management of dairy nutrients are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity has a substantial adverse effect on public health and safety.

(11) This section specifically acknowledges that if a holder of a general or individual national pollutant discharge elimination system permit complies with the permit and the dairy nutrient management plan conditions for appropriate land application practices, the permit provides compliance with the federal clean water act and acts as a shield against citizen or agency enforcement for any additions of pollutants to waters of the state or of the United States as authorized by the permit.

(12) A dairy producer who fails to have an approved dairy nutrient management plan by July 1, 2002, or a certified dairy nutrient management plan by December 31, 2003, and for which no appeals have been filed with the pollution control hearings board, is in violation of this chapter. Each month beyond these deadlines that a dairy producer is out of compliance with the requirement for either plan approval or plan certification shall be considered separate violations of chapter 90.64 RCW that may be subject to penalties. Such penalties may not exceed one hundred dollars per month for each violation up to a combined total of five thousand dollars. The department has discretion in imposing penalties for failure to meet deadlines for plan approval or plan certification if the failure to comply is due to lack of state funding for implementation of the program. Failure to register as required in RCW 90.64.017 shall subject a dairy producer to a maximum penalty of one hundred dollars. Penalties shall be levied by the department. [2011 c 103 § 3; 2003 c 325 § 3; 2002 c 327 § 1; 1998 c 262 § 11; 1993 c 221 § 4.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Intent—Finding—2003 c 325: "A livestock nutrient management program is essential to ensuring a healthy and productive livestock industry in Washington state. The goal of the program must be to provide clear guidance to livestock farms as to their responsibilities under state and federal law to protect water quality while maintaining a healthy business climate for these farms. The program should develop reasonable financial assistance resources, educational and technical assistance to meet these responsibilities, and provide for periodic inspection and enforcement actions to ensure compliance with state and federal water quality laws. The legislature intends that by 2006, there will be a fully functioning state program for concentrated animal feeding operations in the state, and that this program will be a single program for all livestock sectors.

The legislature finds that a livestock nutrient management program is necessary to address the federal rule changes with which livestock operations must comply. Furthermore, budgetary conditions demand efficient and effective governance. In addition, many of the existing requirements and goals for dairy farms will be completed by December 2003, and revisions will be needed." [2003 c 325 § 1.]

Chapter 90.71 RCW

PUGET SOUND WATER QUALITY PROTECTION

Sections

90.71.370 Report to the governor and legislature—State of the Sound report—Review of programs.

90.71.370 Report to the governor and legislature—State of the Sound report—Review of programs. (1) By December 1, 2008, and by September 1st of each even-numbered year beginning in 2010, the council shall provide to the governor and the appropriate fiscal committees of the senate and house of representatives its recommendations for the funding necessary to implement the action agenda in the succeeding biennium. The recommendations shall:

(a) Identify the funding needed by action agenda element;

(b) Address funding responsibilities among local, state, and federal governments, as well as nongovernmental funding; and

(c) Address funding needed to support the work of the partnership, the panel, the ecosystem work group, and entities assisting in coordinating local efforts to implement the plan.

(2) In the 2008 report required under subsection (1) of this section, the council shall include recommendations for projected funding needed through 2020 to implement the action agenda; funding needs for science panel staff; identify methods to secure stable and sufficient funding to meet these needs; and include proposals for new sources of funding to be dedicated to Puget Sound protection and recovery. In preparing the science panel staffing proposal, the council shall consult with the panel.

(3) By November 1st of each odd-numbered year beginning in 2009, the council shall produce a state of the Sound report that includes, at a minimum:

(a) An assessment of progress by state and nonstate entities in implementing the action agenda, including accomplishments in the use of state funds for action agenda implementation;

(b) A description of actions by implementing entities that are inconsistent with the action agenda and steps taken to remedy the inconsistency;

(c) The comments by the panel on progress in implementing the plan, as well as findings arising from the assessment and monitoring program;

(d) A review of citizen concerns provided to the partnership and the disposition of those concerns;

(e) A review of the expenditures of funds to state agencies for the implementation of programs affecting the protection and recovery of Puget Sound, and an assessment of whether the use of the funds is consistent with the action agenda; and

(f) An identification of all funds provided to the partnership, and recommendations as to how future state expenditures for all entities, including the partnership, could better match the priorities of the action agenda.

(4)(a) The council shall review state programs that fund facilities and activities that may contribute to action agenda implementation. By November 1, 2009, the council shall provide initial recommendations regarding program changes to the governor and appropriate fiscal and policy committees of the senate and house of representatives. By November 1, 2010, the council shall provide final recommendations regarding program changes, including proposed legislation to implement the recommendation, to the governor and appropriate fiscal and policy committees of the senate and house of representatives.

(b) The review in this subsection shall be conducted with the active assistance and collaboration of the agencies administering these programs, and in consultation with local governments and other entities receiving funding from these programs:

(i) Water pollution control facilities financing, chapter 70.146 RCW;

(ii) The water pollution control revolving fund, chapter 90.50A RCW;

(iii) The public works assistance account, chapter 43.155 RCW;

(iv) The aquatic lands enhancement account, RCW 79.105.150;

(v) The state toxics control account and local toxics control account and clean-up program, chapter 70.105D RCW;

(vi) The acquisition of habitat conservation and outdoor recreation land, chapter 79A.15 RCW;

(vii) The salmon recovery funding board, RCW 77.85.110 through 77.85.150;

(viii) The community economic revitalization board, chapter 43.160 RCW;

(ix) Other state financial assistance to water quality-related projects and activities; and

(x) Water quality financial assistance from federal programs administered through state programs or provided directly to local governments in the Puget Sound basin.

(c) The council's review shall include but not be limited to:

(i) Determining the level of funding and types of projects and activities funded through the programs that contribute to implementation of the action agenda;

(ii) Evaluating the procedures and criteria in each program for determining which projects and activities to fund, and their relationship to the goals and priorities of the action agenda;

(iii) Assessing methods for ensuring that the goals and priorities of the action agenda are given priority when program funding decisions are made regarding water quality-related projects and activities in the Puget Sound basin and habitat-related projects and activities in the Puget Sound basin;

(iv) Modifying funding criteria so that projects, programs, and activities that are inconsistent with the action agenda are ineligible for funding;

(v) Assessing ways to incorporate a strategic funding approach for the action agenda within the outcome-focused performance measures required by RCW 43.41.270 in administering natural resource-related and environmentally based grant and loan programs.

(5) During the 2009-2011 fiscal biennium, the council's review must result in a ranking of projects affecting the protection and recovery of the Puget Sound basin that are proposed in the governor's capital budget submitted under RCW 43.88.060. The ranking shall include recommendations for reallocation of total requested funds for Puget Sound basin projects to achieve the greatest positive outcomes for protection and recovery of Puget Sound and shall be submitted to the appropriate fiscal committees of the legislature no later than February 1, 2011.

(6) During the 2011-2013 fiscal biennium, the council shall by November 1, 2012, produce the state of the Sound

report as defined in subsection (3) of this section. [2011 1st sp.s. c 50 § 977; 2010 1st sp.s. c 36 § 6013; 2009 c 479 § 74; 2008 c 329 § 927; 2007 c 341 § 19.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2010 1st sp.s. c 36: See note following RCW 43.155.050.

Effective date—2009 c 479: See note following RCW 2.56.030.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Chapter 90.72 RCW

SHELLFISH PROTECTION DISTRICTS

Sections

90.72.040 Shellfish protection districts—Creation—Boundaries—Cooperation with governmental entities—Abolition—Referendum to repeal creation—Certain fees not permitted.

90.72.040 Shellfish protection districts—Creation—Boundaries—Cooperation with governmental entities—Abolition—Referendum to repeal creation—Certain fees not permitted. (1) The county legislative authority may create a shellfish protection district on its own motion or by submitting the question to the voters of the proposed district and obtaining the approval of a majority of those voting. The boundaries of the district shall be determined by the legislative authority. The legislative authority may create more than one district. A district may include any area or areas within the county, whether incorporated or unincorporated. Counties shall coordinate and cooperate with cities, towns, and water-related special districts within their boundaries in establishing shellfish protection districts and carrying out shellfish protection programs. Where a portion of the proposed district lies within an incorporated area, the county shall develop procedures for the participation of the city or town in the determination of the boundaries of the district and the administration of the district, including funding of the district's programs. The legislative authority of more than one county may by agreement provide for the creation of a district including areas within each of those counties. County legislative authorities are encouraged to coordinate their plans and programs to protect shellfish growing areas, especially where shellfish growing areas are located within the boundaries of more than one county. The legislative authority or authorities creating a district may abolish a shellfish protection district on its or their own motion or by submitting the question to the voters of the district and obtaining the approval of a majority of those voting.

(2) If the county legislative authority creates a shellfish protection district by its own motion, any registered voter residing within the boundaries of the shellfish protection district may file a referendum petition to repeal the ordinance that created the district. Any referendum petition to repeal the ordinance creating the shellfish protection district shall be filed with the county auditor within seven days of passage of the ordinance. Within ten days of the filing of a petition, the county auditor shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative

answer to the question and an affirmative vote on the measure results in creation of the shellfish protection district and a negative answer to the question and a negative vote on the measure results in the shellfish protection district not being created. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than twenty-five percent of the registered voters residing within the boundaries of the shellfish protection district and file the signed petitions with the county auditor. Each petition form shall contain the ballot title and full text of the measure to be referred. The county auditor shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the county auditor shall submit the referendum measure to the registered voters residing in the shellfish protection district in a special election no later than one hundred twenty days after the signed petition has been filed with the county auditor.

(3) The county legislative authority shall not impose fees, rates, or charges for shellfish protection district programs upon properties on which fees, rates, or charges are imposed under chapter 36.89 or 36.94 RCW for substantially the same programs and services. [2011 c 10 § 84; 1997 c 447 § 20; 1992 c 100 § 3; 1985 c 417 § 4.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

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

Findings—1992 c 100: See note following RCW 90.72.030.

Chapter 90.76 RCW

UNDERGROUND STORAGE TANKS

Sections

90.76.010 Definitions.

90.76.020 Department's powers and duties—Rule-making authority.

90.76.010 Definitions. (1) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Department" means the department of ecology.

(b) "Director" means the director of the department.

(c) "Facility compliance tag" means a marker, constructed of metal, plastic, or other durable material, that clearly identifies all qualifying underground storage tanks on the particular site for which it is issued.

(d) "Federal act" means the federal resource conservation and recovery act, as amended (42 U.S.C. Sec. 6901, et seq.).

(e) "Federal regulations" means the underground storage tanks regulations (40 C.F.R. Secs. 280 and 281) adopted by the United States environmental protection agency under the federal act.

(f) "License" means the master business license underground storage tank endorsement issued by the department of revenue.

(g) "Underground storage tank compliance act of 2005" means Title XV and subtitle B of P.L. 109-58 (42 U.S.C. Sec. 15801 et seq.) which have amended the federal resource conservation and recovery act's subtitle I.

(h) "Underground storage tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

(2) Except as provided in this section and any rules adopted by the department under this chapter, the definitions contained in the federal regulations apply to the terms in this chapter. [2011 c 298 § 39; 2007 c 147 § 2; 1998 c 155 § 1; 1989 c 346 § 2.]

Sunset Act application: See note following chapter digest.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

90.76.020 Department's powers and duties—Rule-making authority.

(1) The department must adopt rules establishing requirements for all underground storage tanks that are regulated under the federal act, taking into account the various classes or categories of tanks to be regulated. The rules must be consistent with and no less stringent than the federal regulations and the underground storage tank compliance act of 2005 and consist of requirements for the following:

(a) New underground storage tank system design, construction, installation, and notification;

(b) Upgrading existing underground storage tank systems;

(c) General operating requirements;

(d) Release detection;

(e) Release reporting;

(f) Out-of-service underground storage tank systems and closure;

(g) Financial responsibility for underground storage tanks containing regulated substances; and

(h) Groundwater protection measures, including secondary containment and monitoring for installation or replacement of all underground storage tank systems or components, such as tanks and piping, installed after July 1, 2007, and under dispenser spill containment for installation or replacement of all dispenser systems installed after July 1, 2007.

(2) The department must adopt rules:

(a) Establishing physical site criteria to be used in designating local environmentally sensitive areas;

(b) Establishing procedures for local government application for this designation; and

(c) Establishing procedures for local government adoption and department approval of rules more stringent than the statewide standards in these designated areas.

(3) The department must establish by rule an administrative and enforcement program that is consistent with and no less stringent than the program required under the federal regulations in the areas of:

(a) Compliance monitoring, including procedures for recordkeeping and a program for systematic inspections;

(b) Enforcement;

(c) Public participation;

(d) Information sharing;

(e) Owner and operator training; and

(f) Delivery prohibition for underground storage tank systems or facilities that are determined by the department to be ineligible to receive regulated substances.

(4) The department must establish a program that provides for the annual licensing of underground storage tanks.

The license must take the form of a tank endorsement on the facility's annual master business license issued by the department of revenue. A tank is not eligible for a license unless the owner or operator can demonstrate compliance with the requirements of this chapter and the annual tank fees have been remitted. The department may revoke a tank license if a facility is not in compliance with this chapter, or any rules adopted under this chapter. The master business license must be displayed by the tank owner or operator in a location clearly identifiable.

(5)(a) The department must issue a one-time "facility compliance tag" to underground storage tank facilities that have installed the equipment required to meet corrosion protection, spill prevention, overflow prevention, leak detection standards, have demonstrated financial responsibility, and have paid annual tank fees. The facility must continue to maintain compliance with corrosion protection, spill prevention, overflow prevention, and leak detection standards, financial responsibility, and have remitted annual tank fees to display a facility compliance tag. The facility compliance tag must be displayed on or near the fire emergency shutoff device, or in the absence of such a device in close proximity to the fill pipes and clearly identifiable to persons delivering regulated substance to underground storage tanks.

(b) The department may revoke a facility compliance tag if a facility is not in compliance with the requirements of this chapter, or any rules adopted under this chapter.

(6) The department may place a red tag on a tank at a facility if the department determines that the owner or operator is not in compliance with this chapter or the rules adopted under this chapter regarding the compliance requirements related to that tank. Removal of a red tag without authorization from the department is a violation of this chapter.

(7) The department may establish programs to certify persons who install or decommission underground storage tank systems or conduct inspections, testing, closure, cathodic protection, interior tank lining, corrective action, site assessments, or other activities required under this chapter. Certification programs must be designed to ensure that each certification will be effective in all jurisdictions of the state.

(8) When adopting rules under this chapter, the department must consult with the state building code council to ensure coordination with the building and fire codes adopted under chapter 19.27 RCW. [2011 c 298 § 40; 2007 c 147 § 3; 1998 c 155 § 2; 1989 c 346 § 3.]

Sunset Act application: See note following chapter digest.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Chapter 90.90 RCW

COLUMBIA RIVER BASIN WATER SUPPLY

Sections

90.90.010	Columbia river basin water supply development account—Use for storage facilities and access to water supplies—Evaluation—Public comment—Use of net water savings—Water service contracts.
90.90.020	Allocation and development of water supplies.
90.90.040	Columbia river water supply inventory—Long-term water supply and demand forecast.
90.90.090	Columbia river basin taxable bond water supply development account—Water service contracts.

90.90.100 Columbia river basin water supply revenue recovery account—Water service contracts.

90.90.110 Use of certain water made available through reoperation of Sullivan lake.

90.90.010 Columbia river basin water supply development account—Use for storage facilities and access to water supplies—Evaluation—Public comment—Use of net water savings—Water service contracts. (1) The Columbia river basin water supply development account is created in the state treasury. The account may receive direct appropriations from the legislature, receipts of any funds pursuant to RCW 90.90.020 and 90.90.030, or funds from any other sources. The account is intended to fund projects using tax exempt bonds.

(2)(a) Expenditures from the Columbia river basin water supply development account may be used to assess, plan, and develop new storage, improve or alter operations of existing storage facilities, implement conservation projects, develop pump exchanges, or any other actions designed to provide access to new water supplies within the Columbia river basin for both instream and out-of-stream uses. Except for the development of new storage projects and pump exchanges, there shall be no expenditures from this account for water acquisition or transfers from one water resource inventory area to another without specific legislative authority. For purposes of this chapter, "pump exchanges" means water supply development projects that exchange water from one source to another or relocate an existing diversion downstream, with resulting instream benefit.

(b) Two-thirds of the funds placed in the account shall be used to support the development of new storage facilities and pump exchanges; the remaining one-third shall be used for the other purposes listed in this section.

(3)(a) Funds may not be expended from this account for the construction of a new storage facility until the department of ecology evaluates the following:

- (i) Water uses to be served by the facility;
- (ii) The quantity of water necessary to meet those uses;
- (iii) The benefits and costs to the state of meeting those uses, including short-term and long-term economic, cultural, and environmental effects; and
- (iv) Alternative means of supplying water to meet those uses, including the costs of those alternatives and an analysis of the extent to which long-term water supply needs can be met using these alternatives.

(b) The department of ecology may rely on studies and information developed through compliance with other state and federal permit requirements and other sources. The department shall compile its findings and conclusions, and provide a summary of the information it reviewed.

(c) Before finalizing its evaluation under the provisions of this section, the department of ecology shall make the preliminary evaluation available to the public. Public comment may be made to the department within thirty days of the date the preliminary evaluation is made public.

(4) Net water savings achieved through conservation measures funded by the account shall be placed in trust in proportion to the state funding provided to implement a project.

(5) Net water savings achieved through conservation measures funded by the account developed within the bound-

aries of the federal Columbia river reclamation project and directed to the Odessa subarea to reduce the use of groundwater for existing irrigation is exempt from the provisions of subsection (4) of this section.

(6) The department of ecology may enter into water service contracts with applicants receiving water from the program to recover all or a portion of the cost of developing the water supply. Costs recovered under water service contracts does not include staff time expended by the department on developing the water supply. With the applicant's concurrence, the department may receive power revenue generated by the water supply developed by the department through water service contracts. The department may deny an application if the applicant does not enter into a water service contract. Revenue collected from water service contracts must be deposited into the Columbia river basin water supply revenue recovery account created in RCW 90.90.100. The department may adopt rules describing the methodology as to how charges will be established and direct costs recovered for water supply developed under the Columbia river basin water supply program. Water service contracts with federal agencies under RCW 90.42.150 are not required to be established by rule.

(7) Moneys in the Columbia river basin water supply development account created in this section may be spent only after appropriation.

(8) Interest earned by deposits in the account will be retained in the account. [2011 c 83 § 1; 2006 c 6 § 2.]

90.90.020 Allocation and development of water supplies. (1)(a) Water supplies secured through the development of new storage facilities made possible with funding from the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, and the Columbia river basin water supply revenue recovery account shall be allocated as follows:

(i) Two-thirds of active storage shall be available for appropriation for out-of-stream uses; and

(ii) One-third of active storage shall be available to augment instream flows and shall be managed by the department of ecology. The timing of releases of this water shall be determined by the department of ecology, in cooperation with the department of fish and wildlife and fisheries comanagers, to maximize benefits to salmon and steelhead populations.

(b) Water available for appropriation under (a)(i) of this subsection but not yet appropriated shall be temporarily available to augment instream flows to the extent that it does not impair existing water rights.

(2) Water developed under the provisions of this section to offset out-of-stream uses and for instream flows is deemed adequate mitigation for the issuance of new water rights provided for in subsection (1)(a) of this section and satisfies all consultation requirements under state law related to the issuance of new water rights.

(3) The department of ecology shall focus its efforts to develop water supplies for the Columbia river basin on the following needs:

(a) Alternatives to groundwater for agricultural users in the Odessa subarea aquifer;

(b) Sources of water supply for pending water right applications;

(c) A new uninterruptible supply of water for the holders of interruptible water rights on the Columbia river mainstem that are subject to instream flows or other mitigation conditions to protect stream flows; and

(d) New municipal, domestic, industrial, and irrigation water needs within the Columbia river basin.

(4) The one-third/two-thirds allocation of water resources between instream and out-of-stream uses established in this section does not apply to applications for changes or transfers of existing water rights in the Columbia river basin. [2011 c 83 § 4; 2006 c 6 § 3.]

90.90.040 Columbia river water supply inventory—Long-term water supply and demand forecast. (1) To support the development of new water supplies in the Columbia river and to protect instream flow, the department of ecology shall work with all interested parties, including interested county legislative authorities and watershed planning groups in the Columbia river basin, and affected tribal governments, to develop a Columbia river water supply inventory and a long-term water supply and demand forecast. The inventory must include:

(a) A list of conservation projects that have been implemented under this chapter and the amount of water conservation they have achieved; and

(b) A list of potential water supply and storage projects in the Columbia river basin, including estimates of:

(i) Cost per acre-foot;

(ii) Benefit to fish and other instream needs;

(iii) Benefit to out-of-stream needs; and

(iv) Environmental and cultural impacts.

(2) The department of ecology shall complete the first Columbia river water supply inventory by November 15, 2006, and shall update the inventory annually thereafter.

(3) The department of ecology shall complete the first Columbia river long-term water supply and demand forecast by November 15, 2006, and shall update the report every five years thereafter. [2011 c 83 § 6; 2006 c 6 § 5.]

90.90.090 Columbia river basin taxable bond water supply development account—Water service contracts.

(1) The Columbia river basin taxable bond water supply development account is created in the state treasury. All receipts from direct appropriations from the legislature, moneys directed to the account pursuant to RCW 90.90.020 and 90.90.030, or moneys directed to the account from any other sources must be deposited in the account. Moneys in the account may be spent only after appropriation. The account is intended to fund projects using taxable bonds. Expenditures from the account may be used only as provided in this section.

(2)(a) Expenditures from the Columbia river basin taxable bond water supply development account may be used to assess, plan, and develop new storage, improve or alter operations of existing storage facilities, implement conservation projects, develop pump exchanges, or any other actions designed to provide access to new water supplies within the Columbia river basin for both instream and out-of-stream uses. Except for the development of new storage projects and pump exchanges, there may be no expenditures from the

account for water acquisition or transfers from one water resource inventory area to another without specific legislative authority. For the purposes of this section, the term "pump exchanges" means water supply development projects that exchange water from one source to another or relocate an existing diversion downstream, with resulting instream benefit.

(b) Two-thirds of the moneys placed in the account must be used to support the development of new storage facilities and pump exchanges; the remaining one-third of the moneys must be used for the other purposes listed in this section.

(3)(a) Funds may not be expended from the account for the construction of a new storage facility until the department of ecology evaluates the following:

- (i) Water uses to be served by the facility;
- (ii) The quantity of water necessary to meet those uses;
- (iii) The benefits and costs to the state of meeting those uses, including short-term and long-term economic, cultural, and environmental effects; and
- (iv) Alternative means of supplying water to meet those uses, including the costs of those alternatives and an analysis of the extent to which long-term water supply needs can be met using these alternatives.

(b) The department of ecology may rely on studies and information developed through compliance with other state and federal permit requirements and other sources. The department shall compile its findings and conclusions, and provide a summary of the information it reviewed.

(c) Before finalizing its evaluation under the provisions of this section, the department of ecology shall make the preliminary evaluation available to the public. Public comment may be made to the department within thirty days of the date the preliminary evaluation is made public.

(4) Net water savings achieved through conservation measures funded by the account shall be placed in trust in proportion to the state funding provided to implement a project.

(5) Net water savings achieved through conservation measures funded by the account developed within the boundaries of the federal Columbia river reclamation project and directed to the Odessa subarea to reduce the use of groundwater for existing irrigation is exempt from the provisions of subsection (4) of this section.

(6) The department of ecology may enter into water service contracts with applicants receiving water from the program to recover all or a portion of the cost of developing the water supply. Costs recovered under water service contracts does not include staff time expended by the department on developing the water supply. With the applicant's concurrence, the department may receive power revenue generated by the water supply developed by the department through water service contracts. The department may deny an application if the applicant does not enter into a water service contract. Revenue collected from water service contracts must be deposited into the Columbia river basin water supply revenue recovery account created in RCW 90.90.100. The department may adopt rules describing the methodology as to how charges will be established and direct costs recovered for water supply developed under the Columbia river basin water supply program. Water service contracts with federal agen-

cies under RCW 90.42.150 are not required to be established by rule.

(7) Interest earned by deposits in the account will be retained in the account. [2011 c 83 § 2.]

90.90.100 Columbia river basin water supply revenue recovery account—Water service contracts. (1) The Columbia river basin water supply revenue recovery account is created in the state treasury. All receipts from direct appropriations from the legislature, moneys directed to the account pursuant to RCW 90.90.020 and 90.90.030, revenue from water service contracts described in this chapter, or moneys directed into the account from any other sources must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as provided in this section.

(2)(a) Expenditures from the Columbia river basin water supply revenue recovery account may be used to assess, plan, and develop new storage, improve or alter operations of existing storage facilities, implement conservation projects, develop pump exchanges, or any other actions designed to provide access to new water supplies within the Columbia river basin for both instream and out-of-stream uses. Except for the development of new storage projects and pump exchanges, there may be no expenditures from the account for water acquisition or transfers from one water resource inventory area to another without specific legislative authority. For the purposes of this section, the term "pump exchanges" means water supply development projects that exchange water from one source to another or relocate an existing diversion downstream, with resulting instream benefit.

(b) Two-thirds of the moneys placed in the account must be used to support the development of new storage facilities and pump exchanges; the remaining one-third of the moneys must be used for the other purposes listed in this section.

(3)(a) Funds may not be expended from the account for the construction of a new storage facility until the department of ecology evaluates the following:

- (i) Water uses to be served by the facility;
- (ii) The quantity of water necessary to meet those uses;
- (iii) The benefits and costs to the state of meeting those uses, including short-term and long-term economic, cultural, and environmental effects; and
- (iv) Alternative means of supplying water to meet those uses, including the costs of those alternatives and an analysis of the extent to which long-term water supply needs can be met using these alternatives.

(b) The department of ecology may rely on studies and information developed through compliance with other state and federal permit requirements and other sources. The department shall compile its findings and conclusions, and provide a summary of the information it reviewed.

(c) Before finalizing its evaluation under the provisions of this section, the department of ecology shall make the preliminary evaluation available to the public. Public comment may be made to the department within thirty days of the date the preliminary evaluation is made public.

(4) Net water savings achieved through conservation measures funded by the account shall be placed in trust in

proportion to the state funding provided to implement a project.

(5) Net water savings achieved through conservation measures funded by the account developed within the boundaries of the federal Columbia river reclamation project and directed to the Odessa subarea to reduce the use of groundwater for existing irrigation is exempt from the provisions of subsection (4) of this section.

(6) The department of ecology may enter into water service contracts with applicants receiving water from the program to recover all or a portion of the cost of developing the water supply. Costs recovered under water service contracts does not include staff time expended by the department on developing the water supply. With the applicant's concurrence, the department may receive power revenue generated by the water supply developed by the department through water service contracts. The department may deny an application if the applicant does not enter into a water service contract. Revenue collected from water service contracts must be deposited into the Columbia river basin water supply revenue recovery account created in this section. The department may adopt rules describing the methodology as to how charges will be established and direct costs recovered for water supply developed under the Columbia river basin water supply program. Water service contracts with federal agencies under RCW 90.42.150 are not required to be established by rule.

(7) Interest earned by deposits in the account will be retained in the account. [2011 c 83 § 3.]

90.90.110 Use of certain water made available through reoperation of Sullivan lake. Two-thirds of the water made available through reoperation of Sullivan lake funded from the Columbia river basin water supply development account created in RCW 90.90.010 must be used to supply or offset out-of-stream uses described in RCW 90.90.020(3) in Douglas, Ferry, Lincoln, Okanogan, Pend Oreille, and Stevens counties. At least one-half of this quantity must be made available for municipal, domestic, and industrial uses. [2011 c 83 § 5.]

